THE HUDSON CASINO REJECTION

INTRODUCTION

This section of the report focuses on the rejection by the Department of the Interior (DOI) of an application to take a 55 acre parcel of land into trust with the ultimate objective of establishing an off-reservation gaming facility. This application was made by three impoverished Wisconsin Indian tribes who anticipated going into partnership with the owner of an already existing class III gaming facility. After complying with all of the requirements placed upon the tribes by the Department of the Interior, the Bureau of Indian Affairs (BIA) regional office in Ashland, Wisconsin, and the area office in Minneapolis, Minnesota, both recommended that the application be approved. After those closest to the proposed site recommended the approval of the application on November 14, 1994, a 32 page report was sent to Interior's central office in Washington, DC for final review.[1]

For the three tribes this was a day to celebrate because, as DOI spokeswoman Stephanie Hanna noted, the DOI has never overturned an Area Office recommendation to take land into trust for gaming purposes.[2] The 32 page report from the Minnesota area office discussed a number of factors supporting approval of the application. These included: an agreement for government services, consultation with the city of Hudson, public response to the proposal, impact on the neighboring tribes, environmental impact, and impact on the infrastructure including traffic, lighting and water. Nevertheless, on July 14, 1995, the Department decided against the recommendation of both the regional and area offices and rejected the tribes' application.[3]

In the weeks and months following the rejection, it became apparent that it was possible that campaign donations and political considerations may have influenced the Department of the Interior's decision. As the Committee reviewed various campaign finance issues, an investigation into the decision making process was commenced. During the investigation, the Committee deposed and/or interviewed officials from the White House, the Department of the Interior, lobbyists on both sides of the application and representatives from the three applicant Wisconsin Indian tribes. The Committee also subpoenaed documents from various sources including the Department of the Interior, law firms and lobbyists involved with the application, and a number of individuals close to the case. Additionally, the Committee received relevant documents from the ongoing federal and state litigation surrounding the Department's decision.

On January 21, 22, 28, and 29, 1998, the Committee held public hearings on the issue of whether undue political influence led to the rejection of the application. The Committee heard from witnesses including: the Chairmen of the three adversely affected

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[1] *See* Denise Homer's Recommendation to the Assistant Secretary for Indian Affairs (Exhibit 1).
[2] *See* Spivak, Cary, *Did White House Kill a Casino?*, Milwaukee Journal Sentinel, September 14, 1997.
[3] Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania, and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).

tribes, Patrick O'Connor (a lobbyist opposed to the application), Secretary of the Interior Bruce Babbitt and a number of officials from the Department of the Interior. These hearings focused on the process by which the Department of the Interior came to reject the recommendations of its area office and the influence of outside entities on the process.

EVENTS LEADING TO THE DENIAL

In late 1993, three impoverished[4] Wisconsin Indian tribes—the Mole Lake Sakaogon Chippewa, the Lac Courte Oreille Band of Lake Superior Chippewa, and the Red Cliff Band of Lake Superior Chippewa—applied to have the United States Government, through the Department of the Interior, take land into trust in Hudson, Wisconsin, for the purpose of gaming.[5] An existing Class III gaming facility already on the parcel of land required very little modification to add additional gaming devices[6]. The structure was originally built as a greyhound racing park and included a 10,000 car parking lot to accommodate a capacity crowd. A four lane roadway had already been built by the developer of the existing track to relieve potential congestion problems that could be created by a crowd attending a specific event at the race track. Furthermore, the expected usage of the casino was not greater than that originally anticipated for the greyhound facility.

The applicant tribes moved the application forward according to the prescribed guidelines of the Indian Gaming Regulatory Act (IGRA). After an exhaustive review by both the regional office and the area office of the BIA, including consultation with area officials and the surrounding tribes, the Area Director sent a 32 page recommendation for approval to the central office in Washington, DC.

Once the application arrived in Washington, a number of native American tribes who felt that new competition might jeopardize their casino profits hired lobbyists to bring political pressure on those who might be in a position to reverse the earlier decisions. The tribes hired Patrick O'Connor, a well known lobbyist, former fundraiser for Bruce Babbitt's Presidential bid in 1988, and former DNC treasurer. O'Connor, a name partner at the law firm of O'Connor and Hannan based in Minneapolis, wasted no time in applying significant pressure on the Democratic National Committee (DNC), the President, White House staff, Members of Congress, and the Department of the Interior.

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[4] According to Arlyn Ackley, Sr., the Chairman of the Mole Lake Sokaogon Chippewas, the unemployment rate for his tribe was over 40%, and the average household income was approximately $8,000 per year. George Newago, the Chairman of the Red Cliff Chippewa, indicated that his tribe faced over 50% unemployment and a household income of $5,300 per year. Committee interviews with Chairman Arlyn Ackley, Sr., and Chairman George Newago, December 16, 1997.

[5] This is the normal process used by Native American tribes under Section 20 of the Indian Gaming Regulatory Act (IGRA) for the acquisition of "off reservation" land. *See* 25 U.S.C. § 2719 (1988).

[6] In an interview with Committee investigators, Mr. Fred Havenick, the owner of the existing dog track in Hudson, Wisconsin, confirmed that no external construction was necessary or planned if the application had been approved.

On February 8, 1995, O'Connor set-up a meeting in Minnesota Congressman Jim Oberstar's office with members of the Minnesota Congressional delegation, John Duffy, who served as Counselor to Secretary of the Interior Babbitt, and George Skibine, the head of the Indian Gaming Management Staff (IGMS).[7] The meeting resulted in a great benefit to the tribes opposed to the application because Duffy agreed to extend the comment period which the Area Director had closed prior to sending her recommendation to Washington. Duffy would later set an April 30, deadline for the comment period. However, he failed to notify the applicant tribes of this special extension, thereby giving the opponents of the application an unfair advantage.[8] Given that the Department was required to treat all parties evenhandedly, this was a troubling decision.

The February 8, 1995, meeting in Representative Oberstar's office was followed five weeks later by another high level contact between the lobbyists against the application and representatives from Secretary Babbitt's office. On March 15, 1995, Patrick O'Connor and former Congressman Thomas Corcoran (a law partner of O'Connor) met with Tom Collier, Secretary Babbitt's Chief of Staff, and Heather Sibbison, Special Assistant to Secretary Babbitt's Counselor John Duffy.[9] One of the matters discussed at this meeting was "the politics of the project." Collier also told O'Connor and Corcoran that "the final decision would be made by him or Secretary Babbitt 'depending on the level of controversy this application generates.'"[10]

The President is Asked for Assistance

As early as April of 1995, Patrick O'Connor tried to contact Loretta Avent, Special Assistant to the President for Intergovernmental Affairs, the person in the White House who handled Native American issues.[11] He faxed material to the White House which discussed his client's opposition to the Hudson application and asked that Avent intervene with Secretary Babbitt on the Hudson application.[12] According to Avent, she did not return O'Connor's call or answer his fax because of legal advice she had received and thus "would not speak with him or any lobbyist or lawyer" about these issues.[13] Although, his initial calls appear not to have been returned, O'Connor capitalized on an opportunity to speak directly with President Clinton when he met with the President,

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[7] Memorandum from Larry Kitto to Lewis Taylor, February 6, 1995 (Exhibit 67). This memorandum states: "Pat O'Connor of our firm is working with Secretary Babbitt's office to confirm his participation in the meeting that will be held on Wednesday, February 8, 1995 at 1:30 p.m. in Congressman Oberstar's office."

[8] An undated letter to Secretary Babbitt from the applicants indicates that they were never informed by the Department of Interior about the extension of the comment period (Exhibit 3). John Duffy, Secretary Babbitt's Solicitor, later notified the tribes in a March 27, 1995, letter to Arlyn Ackley, Sr., almost seven weeks after the period was opened (Exhibit 4). In fact, this notification might never have occurred if Ackley had not found out about the extension from other sources. Once this came to light, the Department had no choice but to let both sides respond.

[9] Memorandum from Thomas Corcoran to Larry Kitto, March 17, 1995 (Exhibit 68)

[10] *Id.*

[11] *See* Patrick O'Connor's Datebook, April 10 & 17, 1995 (Exhibit 5).

[12] Memorandum from Michael T. Schmidt to Cheryl Mills, April 24, 1995 (Exhibit 6).

[13] Memorandum from Loretta Avent to Harold Ickes, April 24, 1995 (Exhibit 7).

Bruce Lindsey and Linda Moore at a small fundraising reception in Minneapolis on April 24, 1995.[14]

The April 24 entry in O'Connor's calendar reads, "Meeting w/the President on the Hudson Race track issue with Bruce Lindsey and Linda Moore of the White-House staff."[15] This meeting with the President was the breakthrough the tribes and lobbyists had been looking for. O'Connor explained in his state court deposition[16] that President Clinton was receptive to O'Connor's problem:

> When he [the President] got to me, I said "Mr. President, the Indian tribes I represent are concerned about a possible casino going in near Hudson, Wisconsin which is across the river." And that's what I said. At that juncture, he said "Bruce."' And Bruce [Lindsey] came over . . . [The President] said, "Bruce, talk to O'Connor about his concerns about tribes that he represents." That was it.[17]

Ann Jablonski, a lobbyist for the St. Croix Tribe, confirmed through Tom Corcoran, O'Connor's partner, that O'Connor began to "launch into the matter and Clinton called Lindsay [sic] over to script the story and operationalize a response or resolution. He was apparently the one who decided it was a problem Ickes would/could/should take care of."[18] Jablonski also received confirmation that the President was aware of the Hudson situation: "[a]nother partner in the O'Connor and Hannan firm, Tom Schneider, allegedly an FOB [Friend of Bill] who socializes with Bill and Hillary, has confirmed in a conversation with Clinton that Clinton is aware of the Hudson dog track issue."[19]

Once the President became involved, the White House reacted with a flurry of activity. Lindsey called back to the White House once he returned to Air Force One in order to determine what was happening with the former DNC Treasurer's problem, and why Avent had not returned his calls.[20] O'Connor testified:

> I told Bruce the concern we had . . . And I said, "I'm trying to get our side of this matter, this issue, across to the -- to the people in Interior because" and I explained . . . "I don't believe we're getting through, although we've been trying.". . . And he [Bruce Lindsey] said, "Well," he said, "I'll get someone to call you on this." I said, "I haven't"-- that Loretta Avent call came afterwards. I said, "I haven't been able to get anywhere with Loretta."

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[14] *See* Patrick O'Connor's Datebook, April 24, 1995 (Exhibit 5).
[15] *Id.*
[16] Patrick O'Connor's deposition was taken in a civil law suit filed by the applicant tribes after DOI rejected the application.
[17] State Court Deposition of Patrick O'Connor, April 18, 1997, p.61 (Exhibit 8).
[18] Memorandum from Ann Jablonski to Brady Williamson, May 23, 1995 (Exhibit 9).
[19] *Id.*
[20] *See* Memorandum from Michael T. Schmidt to Cheryl Mills, April 24, 1995 (Exhibit 6).

> And he didn't say anything. He said, "I will have someone call you." And that was it.[21]

This brief meeting with the President was the catalyst for White House activity regarding the Hudson casino application. It is likely that Lindsey contacted Ickes shortly before or after his call to Avent because Ickes placed a call to O'Connor that same day.[22]

Warning of Illegal and Improper Involvement

It appears that the conversation between Lindsey and the White House staff on April 24 made an impression, prompting the two key White House staffers on Indian issues, Loretta Avent (Special Assistant to the President for Intergovernmental Affairs) and Michael Schmidt (Senior Policy Analyst in the White House Office of Policy Development) to prepare memoranda on the issue. Both memoranda outlined legal, ethical, and political reasons that the White House could not get involved and intervene in the application before the Department of the Interior. It appeared that these memoranda were attempts to explain why the White House should not get involved in the decision making process at Interior. The only reasonable explanation for such quick and forceful opposition to White House involvement was that Lindsey may have suggested such involvement.

Ms. Avent's memorandum to Harold Ickes explains the improper nature of White House intervention in an Interior decision. Avent relied upon advice of the White House counsel's office to arrive at the conclusion that involvement by the White House was improper and illegal:

> I just got a call from Bruce in reference to a person named Pat O'Connor, whom I don't know, who has called me on numerous occasions. . . . Following the legal advice we have received concerning these kinds of issues, I have not and would not speak with him or any lobbyist or lawyer. Irrespective of [who] lobbyists and lawyers say they know in this Administration, my first responsibility is to the pres[ident]. Because I am aware of the politics and press surrounding this particular situation, it is in our best interest to keep it totally away from the [W]hite [H]ouse in general, and the pres[ident] in particular. This is such a hot potato (like Cabazon)[23]-- too hot to touch. The legal and political implications of our

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[21] State Court Deposition of Patrick O'Connor, April 18, 1997, p.61 (Exhibit 8).

[22] *Id.* at 79.

[23] The Cabazon Band of Mission Indians were involved in litigation with the Federal Government for the operation of slot machines. They also reportedly funneled over $750,000 into the State of California's Attorney General's race. When asked in her deposition before the Committee about her reference to the Cabazons, Avent replied: "just that it was in court, it was a big court case, and I don't have specifics on it, because I wasn't particularly interested in it other than I just knew it was dealing with gaming and I am not an expert on gaming and I have no expertise in the legal arena at all." (Avent Deposition, December 5, 1997, p. 18). Mark Nichols, the Chief Executive Officer of the Cabazon Band, was indicted in June 1998, and accused "of laundering thousands of dollars in illegal contributions to six Democratic

> involvement would be disastrous. . . . This is a Department of Interior and Justice Department [matter] and that's where it should stay. . . . I explained this to Bruce and he understands the way I operate and I assured him that I would make the call directly to advise the party that called. I will do this as soon as my meeting is over. I'll call later and give you an update. The press is just waiting for this kind of story. We don't need to give it to them.[24]

Michael Schmidt also drafted a memorandum in response to Lindsey's call. He sent his memo to Cheryl Mills in the White House Counsel's office:

> This e-mail is to fill you in more detail about a call that Loretta and I were on with a Lobbyist/Fundraiser named Pat O'Connor . . . Pat called Loretta last week on this issue. As you know, last year WH counsel advised Loretta that she should not meet with lobbyists or lawyers on Indian issues. . . . The White House should not be involved in this issue! . . . As you know, we legally cannot intervene with the Secretary of Interior on this issue. Please have Harold call Don Fowler and explain that there are no secrets in Indian Country, that word of this conversation is already getting out and it would be political poison for the President or his staff to be anywhere near this issue.[25]

Although these two memoranda indicate that the White House staffers understood that they should not get involved in the Hudson issue, the sentiments contrast with an overlooked sentence in Loretta Avent's memorandum, where she stated: "I am on my way into a meeting with five of our strongest tribal leaders (because of their significant voter turnout)[.]"[26] It is somewhat curious that Avent would react so negatively to the Hudson issue and, at the same time, single out Native American leaders -- based on partisan political concerns -- for special White House treatment. The concern regarding "secrets in Indian country," referred to by Schmidt, appears to have been overridden in this political situation.

As the following pages make clear, others at the White House did not follow the course suggested by Avent. There were numerous subsequent contacts between the Secretary of the Interior's office and White House Deputy Chief of Staff Harold Ickes' office.

The DNC Becomes Involved

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candidates, including President Clinton…"(Rosenzweig, David, *California and the West 2 Casino Executives Accused of Laundering Politics*, Los Angeles Times, June 19, 1998).

[24] Memorandum from Loretta Avent to Harold Ickes, April 24, 1995 (Exhibit 7).

[25] Memorandum from Michael Schmidt to Cheryl Mills, April 24, 1995 (Exhibit 6).

[26] Memorandum from Loretta Avent to Harold Ickes, April 24, 1995 (Exhibit 7).

After meeting with the President, O'Connor moved to increase the pressure on the Department of the Interior by involving the DNC. As early as March of 1995, O'Connor was attempting to meet with people at the DNC and Interior.[27] On April 23, 1995, David Mercer called O'Connor to notify him that a meeting with DNC Chairman Fowler was set for a time after his [O'Connor's] meeting with the Department of the Interior's Chief of Staff Tom Collier.[28] On April 28, 1995, Patrick O'Connor and representatives of tribes opposed to the Hudson project met with Don Fowler, White House staff, and staff from various Senate offices.[29] Speculating on why lobbyists would meet with the money raising wing of the Democratic party, Judge Barbara Crabb of the United States District Court for the Western District of Wisconsin stated in a published opinion: "I cannot assume that Fowler met with these tribes merely to socialize. They must have expected that Fowler had some ability to affect the decision on plaintiffs' application."[30]

As it turned out, Judge Crabb appears to have correctly articulated the purpose of the meeting. As one lobbyist who also attended the April 28, 1995, meeting with Don Fowler explained:

> The purpose for this meeting is to discuss our position on the Wisconsin Dog Track Fee to Trust proposal with influential democrats in Washington. The people we are meeting with are very close to President Clinton and can get the job done.[31]

The purpose of the April 28, 1995, meeting with the DNC Chairman was also clearly outlined in a memoranda from lobbyist Larry Kitto to the opposing tribes.

> The purpose of the meeting was to request the DNC and the Committee to re-elect the President, to help communicate with the White House and the President about why the Department of the Interior should not approve the fee-to-trust land transfer for the Hudson Dog Track. The message was quite simple: all of the people against the project both Indian and non-Indian are Democrats who have a substantially large block of votes and who contribute heavily to the Democratic Party. In contrast, all of the people for this project are Republican. Fowler assured the group that he would take this issue up with high ranking officials in the White House[.][32]

Both Chairman Fowler and David Mercer, the Deputy Finance Director of the DNC, understood the potential of helping people who "contribute heavily to the Democratic Party." Lewis Taylor, head of the St. Croix tribe, mentioned in a State Court Deposition

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[27] Patrick O'Connor Datebook, March 15, 1995 (Exhibit 5).
[28] Fax from O'Connor & Hannan to Patrick O'Connor, April 23, 1995 (Exhibit 10).
[29] Sokaogon Chippewa Community v. Bruce Babbitt, 961 F. Supp. 1276, 1282 (W.D. Wis. 1997).
[30] *Id.*
[31] Memorandum from John McCarthy to all tribal leaders, April 25, 1995 (Exhibit 11).
[32] Minnesota Legislative Update April 24-28, 1995 (Exhibit 12) This lobbying report prepared by Larry Kitto mistakenly notes the meeting as April 18, 1995

that contributions to the DNC were discussed. Taylor commented: "I told Mr. Fowler that, you know, that we've got a number of heavy-duty issues that we needed help on and our friends are the Democrats and therefore I think we should donate to assist in some of these causes."[33] Tom Krajewski, a lobbyist working on behalf of the Hudson opponents, passed on information from Kitto, O'Connor's partner and a principal lobbyist for the tribes, that Fowler listened, took notes, asked questions and got the message: "It's politics and the Democrats are against it and the people for it are Republicans."[34] When asked about any discussion of campaign contributions, Fowler did not recall and defended himself by saying that he had "no memory."[35]

It is difficult to believe that Fowler would have a different perception of this meeting. After all, the message was as Larry Kitto said, "quite simple." After the discussions of campaign contributions, Fowler not only promised to contact the White House, but also promised to urge Harold Ickes, White House Deputy Chief of Staff, to press Secretary Babbitt to "make a closer examination of impact of the [Hudson casino]."[36] The above excerpts clearly show a belief on the part of the lobbyists that campaign donations were to be exchanged for policy decisions.

In a document obtained by the Committee from the Democratic National Committee, it seems clear that both Chairman Fowler and David Mercer understood the possible fundraising potential of opponents of the Hudson application. Mercer outlined calls for Chairman Fowler, and under the heading "Pat & Evelyn "Evie" O'Connor" stated:

> The O'Connors are on the hook with Peter Knight to raise $50k for the re-election. I'm meeting with them tonight to talk to them about bringing in the American Indian money of $50k for the Gala[.] . . . Pat is certain to inquire about the status of the Indian gaming issue at Interior.[37]

From this it is clear that the DNC had very clear fundraising goals related to O'Connor, and there was a clear understanding that the lobbyist was interested in a policy issue far from the legitimate purview of the DNC.

DNC Contacts The White House and Department of the Interior

True to his word, Fowler focused his efforts on the White House and the Department of the Interior. In his testimony before the Senate he stated: "I called Mr. Ickes, explained to him the situation, and I called someone at the Department of the

[33] State Court Deposition of Lewis Taylor, December 17, 1996, p. 71 (Exhibit 13).
[34] Memorandum from Tom Krajewski to JoAnn Jones, May 3, 1995 (Exhibit 14).
[35] Testimony of DNC Chairman Don Fowler before the Senate Committee on Governmental Affairs, September 9, 1997, p. 108.
[36] Memorandum from Carl Artman to Scott Dacey, May 1, 1995 (Exhibit 15).
[37] Memorandum from David Mercer to Chairman Fowler, May 19, 1995 (Exhibit 76).

Interior . . . I simply asked that the situation and the facts in that situation be reviewed."[38] However, a memo from DNC counsel Joe Sandler and Neil Reiff to the DNC finance staff updating the "basic legal guidelines for fundraising," specifically states that:

> [I]n no event should any DNC staff ever promise a meeting with or access to any government official or agency in connection with a donation, or ever imply that such contact or access can be arranged, or ever contact an Administration official on behalf of a donor for any reason.[39]

Although this memorandum was updated after Fowler's action, Fowler admits that he was also instructed by White House counsel Jack Quinn and House Political Director Doug Sosnik that such contact on behalf of a donor was inappropriate as was White House involvement in the decision of an independent agency.[40]

Ignoring the warnings he received about the impropriety and illegality of such conduct, Fowler continued to contact the White House. On May 5, 1995, he sent a memorandum to Harold Ickes following up on a previous conversation they had about the Hudson casino proposal.[41] Fowler acknowledged in this memo the politics involved and the stance of the DNC supporters:

> Below is an outline of the issues raised during my meeting with several tribal leaders and DNC supporters who oppose the project. I've also attached a Peat Marwick impact study forwarded by our supporters. Please let me know how we might proceed. . . . The proposal to convert a dog track to a casino is being pushed by American Indian tribes who are supporters of Governor Thompson[.][42]

Continued Pressure on The White House

Fowler's calls and memorandum only added to the pressure placed upon the White House to intervene on the issue. Ickes had tried to contact O'Connor on a number of occasions but appears to have been unsuccessful.[43] O'Connor's May 8, 1995, letter to Ickes, where he expressed his concern that the steps being taken by the officials at the Interior Department were not in his client's best interests, only solidifies the belief that the lobbyists, the DNC and perhaps the White House were working to pressure a decision from Interior:

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[38] Testimony of Don Fowler before Senate Committee on Governmental Affairs, September 9, 1997, p. 107.
[39] Memorandum from Joe Sandler and Neil Reiff to the DNC Finance Staff, November 11, 1995 (Exhibit 16).
[40] Senate Deposition of Don Fowler, May 21, 1997, pp. 260-261.
[41] Memorandum from Don Fowler to Harold Ickes, May 5, 1995 (Exhibit 17).
[42] *Id.*
[43] *See* Letter to Harold Ickes from Patrick O'Connor, May 8, 1995 (Exhibit 18).

> I have been advised that Chairman Fowler has talked to you about this matter and sent you a memo outlining the basis for the opposition to creating another gaming casino in this area. . . . I am concerned that those at Interior who are involved are leaning toward creating trust lands.[44]

O'Connor then put the issue into terms Ickes, President Clinton's chief fundraiser at the White House, could not easily miss: "I would also like to relate the politics involved in this situation: . . . All of the representatives of the tribes that met with Chairman Fowler are Democrats and have been so for years. I can testify to their previous financial support to the DNC and the 1992 Clinton/Gore Campaign Committee."[45] O'Connor's purpose in writing the memo admittedly was "to alert Ickes as to the politics involved."[46] When asked whether he thought the Department of the Interior was required to review the political factors mentioned, Patrick O'Connor testified, "I don't imagine they were."[47] If these were not areas that the Department of the Interior would be considering for the application, it seems reasonable to conclude that O'Connor was looking to exert political influence upon the Department of the Interior's Hudson decision.

On May 14, 1995, Tom Schneider, another O'Connor & Hannan partner, met with President Clinton and Harold Ickes and elicited Ickes' assurances that he would "follow up" on O'Connor's requests relating to the Hudson application.[48] Notwithstanding Schneider's denials that he met with the President on this matter,[49] he did bill his clients for a "meeting with senior White House staff and POTUS [President of the United States] re expansion of gaming and the dog track and opposition to so doing."[50]

Harold Ickes' Staff Contacts the Department of the Interior

Harold Ickes, apparently, did keep his promise. Indeed, Ickes and his staff kept a close eye on the application from the White House. On May 18, 1995, Ickes' assistant, Jennifer O'Connor,[51] prepared a memorandum for Ickes updating him on the information received from Patrick O'Connor and where the Department of Interior was in the decision making process.[52] It is clear from this memorandum that Jennifer O'Connor was in contact with staff familiar with the application at the Department of the Interior. Jennifer O'Connor also was privy to information that Interior was looking to reject the application and advised Ickes that the information "is not public and is confidential at this point."[53]

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[44] *Id.*
[45] *Id.*
[46] State Court Deposition of Patrick O'Connor, April 18, 1997, pp. 128-129 (Exhibit 8).
[47] *Id.*
[48] Deposition of Thomas J. Schneider, December 10, 1997, p. 17.
[49] Deposition of Thomas Schneider, December 10, 1997, p.15.
[50] O'Connor and Hannan Billing Records (Exhibit 31).
[51] Jennifer O'Connor is no relation to Patrick O'Connor.
[52] Memorandum from Jennifer O'Connor to Harold Ickes, May 18, 1995 (Ex. 19).
[53] *Id.*

This would not be the last time the White House would contact Interior to receive confidential information kept from the applicant tribes. On June 6, 1995, David Meyers, an employee in Ickes' office, indicated that he had spoken with Heather Sibbison, Special Assistant to Secretary Babbitt, and that Interior planned to "make an announcement in the next two weeks."[54] Sibbison relayed confidential information that Interior was "95% certain that the application will be turned down. . . .[and] they will probably decline because of their "discretion" in this matter."[55] Sibbison also mentioned the fact that there was local opposition to the application, but noted that "much of the opposition, however, was a by-product of wealthier tribes lobbying against the application[.]"[56] The recognition that local opposition was a by-product of lobbying efforts by "wealthier tribes" is particularly troubling. The regional office and the area office had both concluded that local opposition was not sufficient to deny the application. Only after wealthy opponents became involved – and the Department of the Interior had accorded their tribes preferential treatment in the form of an extended comment period – did local opposition become a dispositive issue. Even then, as will be discussed in later sections of this chapter, the "opposition" failed to articulate substantive reasons for denial of the application. The Department's obvious favoritism tends to undermine the Secretary's assertion that the denial of the application was appropriate.

Further Communication Between The White House and the Department of the Interior

Harold Ickes' office appears to have been the primary contact at the White House for the Department of the Interior. Ickes, in an effort to distance himself from the application, testified that he was "peripherally involved" and "Jennifer O'Connor on my staff was the primary person on [the Hudson application]."[57] Heather Sibbison and Jennifer O'Connor continued communications between the Department of the Interior and the White House, even though O'Connor did indicate that she prefaced all of her conversations with Interior stating "I'm making a status inquiry, don't want to influence anything, don't tell me anything you're not supposed to tell me."[58] In addition, Jennifer O'Connor was also in contact with John Duffy's office. At the time, Duffy was Counselor to the Secretary and one of the top political appointees involved in the decision making process. O'Connor called Duffy's office on at least two occasions known to the Committee. One conversation was in response to a call from Duffy. The message slip

[54] Memorandum from David Meyers to Jennifer O'Connor, June 6, 1995 (Exhibit 20).
[55] *Id.* The quotation marks around the word 'discretion' are found in the original. One of the central concerns in the rejection of the Hudson application is whether the Department made its decision according to articulated standards and past practices. It is curious that someone on Harold Ickes' staff would use quotation marks to describe something the Secretary of the Interior was about to do. Contextually, it seems as though Meyers recognizes that it would not be appropriate in this case to ignore the law, ignore the facts, and decide based on discretion.
[56] *Id.*
[57] Testimony of Harold Ickes before the Senate Committee on Governmental Affairs, October 8, 1997, pp. 46-47.
[58] Deposition of Jennifer O'Connor, September 15, 1997, pp. 96-97.

received from Duffy's office records reads "returned your call."[59] Additionally, it is important to note that the "disposition" column read "done" which most likely means that Duffy returned O'Connor's call.[60]

On June 26, 1995, Jennifer O'Connor faxed a letter to Sibbison inquiring about the Chippewas' application. The next day, Sibbison faxed back two responses -- one indicating that the Department would reject the Chippewa application and the other indicating that the Department was reviewing the matter.[61] This raised strong suspicions of political impropriety in the eyes of Judge Crabb, who stated:

> [T]he fact that [Sibbison] sent two letters to the White House with different messages implies that the White House had been involved in the matter already. Also, the mere fact that Sibbison sent two somewhat contradictory letters suggests that the department was aware of the need for some subterfuge in the process to allow Ickes to advance political ends. The letters seem almost to allow Ickes to choose which direction he wanted the Department to take. The more troubling aspect of Sibbison's June 27 response is that it means the Department had reached a decision on plaintiffs' application by that date. This undermines the department's assertion that Deputy Assistant Secretary Anderson was the one making the decision on plaintiffs' application.[62]

Judge Crabb's remarks appear particularly well-founded considering what was happening at the staff level. For example, on July 5 -- just two weeks after the "subterfuge" of the diametrically opposed letters -- Troy Woodward, a lawyer in the Solicitor's office, sent the following e-mail:

> Tom [Hartman], George [Skibine] said you were working on an analysis of the Hudson Dog Track proposal and whether the proposed gaming would be in the best interests of the Tribes and not detrimental to the surrounding community. Can you please send me an electronic copy of your analysis before 1:30?[63]

This communication is remarkable for two reasons. First, it shows that nine days before the decision was made, the key non-political staff had not reached a conclusion about the fate of the application.[64] Second, and perhaps more important, it shows that there was still

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[59] Department of the Interior telephone record, May 25, 1995 (Exhibit 21)
[60] *Id.*
[61] Letter from Heather Sibbison to Jennifer O'Connor, June 27, 1995. (Exhibit 22).
[62] Sokaogon Chippewa Comm., 961 F. Supp. at 1283.
[63] E-mail from Troy Woodward to Tom Hartman, July 5, 1995 (Exhibit 65).
[64] All produced copies of memoranda prepared by Tom Hartman show that far from finding that the application was a detriment to the surrounding community, he concluded the opposite – that the application was not a detriment to the surrounding community. *See, e.g.*, Memorandum from Indian Gaming Management Staff to Director, Indian Gaming Management Staff, June 8, 1995 (Exhibit 44); *see also* Memorandum from George Skibine to Assistant Secretary – Indian Affairs, undated (Exhibit 45).

no analysis that indicated the application was detrimental to the surrounding community. Nevertheless, nine days later a political appointee rejected the application, stating: "Because of our concerns over detrimental affects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of local communities directly impacted by the proposed off-reservation gaming acquisition."[65] Given the extraordinarily arbitrary nature of the decision, Judge Crabb was certainly justified when she speculated that "the Department was aware of the need for some subterfuge in the process to allow Ickes to advance political ends."[66]

Ultimately, communication between the White House and Interior reached a level where according to David Meyers, Sibbison went so far as to ask Jennifer O'Connor for any "feedback" she might have had on the application.[67] In an extraordinary memorandum from one Ickes staffer to another Ickes staffer, David Meyers writes to Jennifer O'Connor: "[Sibbison] stated that they will probably decline without offering much explanation, because of their "discretion" in this matter. She asked that if you have any feedback please call her with your thoughts."[68] As already discussed, the use of quotation marks for 'discretion' is curious. More important, the fact that the Secretary of the Interior's Special Assistant was telling Harold Ickes' staff that Interior would reject the application "without offering much explanation" cannot be given an innocent explanation. Given the weight of all the evidence before this Committee, the real reason that the rejection would be made "without offering much explanation" is that there was no evidence to offer. Mere incompetence cannot explain why the government would reject an application without properly justifying its decision. Not only is such action the definition of "arbitrary and capricious," it is also, given the almost-certainty of litigation when a decision is not supported by valid reasoning, contemptuous of the taxpayer who must pay for the agency's misfeasance in court.

The communication which has received the most speculation and attention, however, appears to have been from Harold Ickes to Secretary Babbitt himself.

Additional Significant Communications Prior to the Denial

Although evidence shows frequent communication between the White House and the Department indicating the application would be denied, there was no such communication with the applicant tribes. The applicants had a number of contacts with Interior officials and were not informed of any significant -- let alone fatal -- defects in their application. Indeed, in May of 1995, Paul Eckstein,[69] a lawyer and friend of

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Both of these memoranda are marked "draft." However, no other memoranda were produced as final work product, and there are no other staff memoranda to the contrary prior to the rejection letter.

[65] Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania, and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).

[66] Sokaogon Chippewa Comm., 961 F. Supp. At 1283.

[67] Memorandum from David Meyers to Jennifer O'Connor, June 6, 1995 (Exhibit 20).

[68] *Id.*

[69] Paul Eckstein is a long time friend of Secretary Babbitt. The two met at Harvard Law School in 1962 and returned to Arizona to practice law. In 1967, Babbitt was hired by a small law firm in Phoenix where

Secretary Babbitt's who worked on behalf of the Chippewas, had a conversation with Secretary Babbitt during which Babbitt reportedly promised to meet personally with the tribal Chairmen and Eckstein if a problem with the application arose.[70]

On May 17, 1995, tribal representatives, Fred Havenick, and Paul Eckstein met with John Duffy. In this meeting Duffy did not identify any specific problem with the application. Nevertheless, he did convey that he did not believe the application would be a "slam dunk."[71] This was one of the only comments made by Duffy in the meeting. In an effort to look deeper into the matter, the group met with George Skibine and Thomas Hartman that same day. In this meeting the group discussed the technical aspects of the application and no problems were identified.[72] That night, however, staff at Interior met and reported to the White House that a preliminary decision to reject the application had been reached.[73] Not only was this not communicated to the applicant tribes, they had not even been given a clear understanding of what they needed to do to correct any perceived defects in the application. Given the Department's previous efforts to work with applicant tribes to perfect applications -- including in one situation hiring mediators to broker applicant/community harmony -- there has yet to be advanced a reasonable explanation for the Department's approach to this application. If the decision was made under appropriate circumstances, as Secretary Babbitt has repeatedly argued, there would have been no reason to withhold critical information from the applicants, while at the same time favoring the opponents.

George Skibine and Thomas Hartman had the opportunity to articulate any perceived problems when they met again with Paul Eckstein and Fred Havenick on May 31, 1995. Interestingly, there were no problems identified and Eckstein and Havenick left believing the application was on its way to approval.[74] Either Skibine and Hartman did not know that a decision had been made, or they refused to help the applicant tribes. Hartman, however, may not have known about the preliminary decision, because as late as June 16, 1995, he relayed to Eckstein that the staff report was just passed to Skibine and there were no problems that could not be cured.[75] Eckstein later called George Skibine on June 26, 1995, seeking an additional status report. To Eckstein's surprise, Skibine refused

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Eckstein was working. In 1974, Babbitt left the firm when he was elected Arizona Attorney General. In 1978 Babbitt was elected Governor of Arizona. Throughout Babbitt's political career, Paul Eckstein has been a part of his inner circle of advisors. For example, Eckstein ran Babbitt's re-election for Governor in 1982. Needless to say Eckstein and Babbitt were close friends. (Committee Staff Interview with Paul Eckstein; *see also* Senate testimony of Paul Eckstein, October 30, 1997, pp. 13-14).

[70] Testimony of Paul Eckstein before the Senate Committee on Governmental Affairs, October 30, 1997, p. 18; *see also* Senate Deposition of Paul Eckstein, September 30, 1997, p. 29.

[71] Senate Deposition of Paul Eckstein, September 30, 1997, p. 88. In his deposition before this Committee, John Duffy remembered the phrase "not a slam dunk," but did not recall having had any discussions about problems with the application with "the applicant tribes or any other representatives." Deposition of John Duffy, January 26, 1998, pp. 40-41.

[72] *Id.* at 35-36.

[73] *See* Memorandum from Jennifer O'Connor to Harold Ickes, May 18, 1995 (Exhibit 19).

[74] Committee Staff interview with Fred Havenick.

[75] Affidavit of Paul Eckstein, January 8, 1996 (Exhibit 23).

to talk about the application for fear that he would lose his job.[76] Again, this adds to the concern that the Hudson decision was not made on the merits.

Inconsistencies in Secretary Babbitt's Statements

There is substantial evidence that Ickes called Secretary Babbitt in order to influence the Department's decision on the Chippewa's application. Paul Eckstein testified in a sworn affidavit:

> Later that day, on July 14, 1995, I met with Secretary Babbitt. I asked the Secretary if he would delay the release of the decision of the Tribes' application until the following Monday to allow time for the Tribes to attempt to respond to the political pressure being exerted against the application. Secretary Babbitt said that the decision could not be delayed because Presidential Deputy Chief of Staff Harold Ickes had called the Secretary and told him that the decision had to be issued that day.[77]

When word of Eckstein's assertion was disseminated, Secretary Babbitt denied the account. Babbitt immediately denied any contact with Ickes or that Ickes played any role in the decision. Secretary Babbitt even denied ever using Ickes' name in front of Eckstein. In an August 30, 1996, letter to Senator John McCain, Secretary Babbitt stated:

> I must regretfully dispute Mr. Eckstein's assertion that I told him that Mr. Ickes instructed me to issue a decision in this matter without delay. I never discussed the matter with Mr. Ickes; he never gave me any instruction as to what the Department's decision should be, nor when it should be made.[78]

Judge Crabb, in the federal law suit filed in Wisconsin against the Department of the Interior, correctly noted: "[i]t would be improper to dismiss Eckstein's assertion just because Babbitt denies it."[79] Indeed, Secretary Babbitt, upon further reflection, gave Senate Governmental Affairs Committee Chairman Fred Thompson another contradictory statement about what happened:

> [W]hile I did meet with Mr. Eckstein on this matter shortly before the Department made a decision on the application, I have never discussed the matter with Mr. Ickes or anyone else in the White House. Mr. Ickes never gave me instructions as to what this Department's decision should be, nor when it should be made. I do believe that Mr. Eckstein's recollection that I said something to the effect that Mr. Ickes wanted a decision is correct. Mr. Eckstein was extremely persistent in our meeting, and I used this

[76] *Id.* This is Eckstein's recollection of the exchange.
[77] *Id.*
[78] Letter from Secretary Bruce Babbitt to Senator John McCain, August 30, 1996 (Exhibit 24).
[79] Sokaogon, 961 F. Supp. at 1284.

> phrase simply as a means of terminating the discussion and getting him out the door.[80]

In testimony before the Committee on Government Reform and Oversight and the Committee on Governmental Affairs, Babbitt indicated that his statements were not only truthful but consistent.[81] A simple reading, however, would lead to the opposite conclusion.

One of the most damaging and troubling pieces of Eckstein testimony revolved around the alleged rhetorical question asked of Eckstein by Secretary Babbitt. The question involved campaign contributions given to the Democratic party.[82] Secretary Babbitt is said to have indicated that "these tribes [donated] on the order of half a million dollars, something like that."[83] This statement, if true, constitutes an illegal sale of government policy for campaign contributions. Secretary Babbitt has said he has "no recollection" of mentioning contributions with anyone from the White House, the DNC, or anyone else.[84] However, the difference between his correspondence to Senator McCain and then to Senator Thompson -- combined with direct evidence of White House contacts with the Secretary's office and direct and circumstantial evidence relating to improper decision making at the Department of the Interior -- make the Secretary's statement less than credible. Furthermore, Secretary Babbitt's willingness to make misrepresentations about smaller matters – for example, Governor Thompson's position on the application or whether the decision was based solely on Section 20 of the Indian Gaming Regulatory Act – adds to the sense that he has not been candid about his involvement in the Hudson matter.

"Possible DOJ Involvement"

In a document produced to the Committee pursuant to subpoena, Scott Keep, an employee in the Solicitor's office, sent the following e-mail to Heather Sibbison, Hilda Manuel, Michael Anderson, Tom Hartman, Paula Hart, George Skibine and Troy Woodward:

> DOJ [Department of Justice] has found a reference in one of the documents or testimony to possible DOJ involvement in the Hudson dog track matter. Are any of you aware of any involvement by anyone at DOJ

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[80] Letter from Secretary Bruce Babbitt to Senator Fred Thompson, October 10, 1997 (Exhibit 25).
[81] Testimony of Secretary Bruce Babbitt before the Committee on Government Reform & Oversight, January 29, 1998, p.797; *see also* Testimony of Secretary Bruce Babbitt before the Committee on Governmental Affairs, October 30, 1997.
[82] Senate Deposition of Paul Eckstein, September 30, 1997, p.53.
[83] *Id.*
[84] Testimony of Secretary Bruce Babbitt before the Committee on Government Reform & Oversight, January 29, 1998, p.791; *see also* Testimony of Secretary Bruce Babbitt before the Committee on Governmental Affairs, October 30, 1997.

> in the Hudson dog track matter prior to the decision on July 14? . . . If anyone has any recollection of a contact from DOJ, please advise me.[85]

Apart from this one reference, the Committee is not aware of any Department of Justice involvement with the Hudson application prior to the rejection of the application on July 14, 1995. It is entirely possible, however, that such a contact would have relevance to the Committee's investigation.

PROBLEMATIC ASPECTS OF THE HUDSON DECISION

Large Contributors Got What They Wanted

During the 1996 election cycle, tribes opposed to the Hudson application donated at least $356,250 to the DNC and other Democratic Party causes during the 1995-1996 election cycle.[86] This figure does not include money donated by the lobbyists paid by the opponents or other "intangibles," such as the fundraiser held in the home of lobbyist Tom Schneider which raised $420,000 for Clinton Gore '96 the night before the decision to deny the application was made.[87]

Prior to the fundraiser at his home, Schneider had elicited Ickes' promise to "follow up" on Patrick O'Connor's requests regarding the dog track in Hudson, Wisconsin.[88] According to Schneider: "my experience, due to sort of a personal relationship with the White House, is when people say they are going to follow up, they usually will follow up."[89]

These large donations from Native Americans were not merely coincidental. On the contrary, the Democratic National Committee and Clinton/Gore '96 campaign staff were actively soliciting such contributions from Native American tribes.

It is also interesting to note the pattern of wealthy Native American contributors getting what they wanted where off-reservation gaming was concerned. The Sault Ste. Marie Chippewa gave at least $384,964 to the Democrats in 1995-1996[90] and received approval from the Department of the Interior to open a gaming facility over 300 miles

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[85] E-mail from Scott Keep to Heather Sibbison, Hilda Manuel, Michael Anderson, Tom Hartman, Paula Hart, George Skibine, Troy Woodward, November 17, 1997 (Exhibit 72).
[86] *See* Committee on Government Reform and Oversight Chart (Exhibit 26).
[87] *See* Shen, Vern and Vick, Karl, "*Schaefer and Bentley's Latest Pitch*," Washington Post, July 20, 1995.
[88] Deposition of Thomas Schneider, December 10, 1997, pp.16-17.
[89] *Id.*
[90] A "movie list" of attendees at White House movies was produced to the Committee which lists "Bernard (Chippewa Indians)" along with Ted Sioeng, Charlie Trie, Arief Wiriadinata and sixteen others. *See* movie list (Exhibit 27). At one point, the DNC appeared to be feeling great urgency regarding matters pertaining to this tribe. In a call sheet dated February 22, 1996, Mark Thomann called Richard Sullivan and the following message was recorded: "[c]an we overnight a Finance Board packet to his Indians." (Exhibit 28).

from their reservation.[91] The Mashantucket Pequots gave over $409,625 in 1995 and 1996 to the Democrats and the Department of the Interior not only approved their application, but hired mediators to try to alleviate some of the extraordinary local opposition to the expansion of gambling. Indeed, the Committee received one document from the DNC on August 28, 1998 -- seven months after the Committee held hearings on this subject -- which shows that Richard Hayward, the Chairman of the Mashantucket Pequots, is listed as: "Wrote $500,000 +" to the DNC. [92]

The opposing tribes in the Hudson matter contributed (through Patrick O'Connor) at the same time that opposition tribe lobbyists were meeting with White House and DNC staff (through O'Connor) on the Chippewas' application.[93] Patrick O'Connor also testified that he met with David Mercer, the Deputy Finance Director of the DNC, several times after his April 28 meeting with Chairman Fowler to discuss "how many Indians we could get to attend the presidential gala" ($1000 or $1500 donation required) in June.[94] Patrick O'Connor had a goal to raise $25,000 from the Tribes for that fundraiser,[95] and he also recalled that he and Larry Kitto met with Terry McAuliffe, the National Finance Chairman of the Clinton/Gore '96 Committee, and was asked for more $1000 donations from members of tribes opposed to the application.[96] O'Connor was also responsible for a fundraiser on October 23, 1996, in Minneapolis, Minnesota, honoring Vice President Gore, in which 17 of the 20 attendees were members of tribes opposed to the Hudson casino, or their lobbyists.[97] Thus, the Vice President went to a fundraiser that was – with the exception of only three attendees – composed exclusively of beneficiaries of the Hudson decision.

In testimony before the Senate Governmental Affairs Committee, when asked about the contact Patrick O'Connor had with Deputy Finance Director David Mercer while the Hudson application was under consideration at the Department of the Interior, Fowler could not remember anything about Mercer's contacts with those opposed to the application.[98] However, Chairman Fowler admitted that "one could infer that the casino matter was discussed[.]"[99] Although O'Connor has denied any link between DNC solicitations and his clients' donations, a review of his daybook would reasonably lead to a different conclusion. Because O'Connor billed his Native American clients for the time he spent discussing and coordinating campaign donations with the DNC and Clinton/Gore '96 staff,[100] it is reasonable to conclude that Patrick O'Connor believed that these

[91] The tribe's casino application was vetoed by the Governor of Michigan and therefore the casino was not built.
[92] This is a sum far greater than that known prior to the recent production of documents (Exhibit 29).
[93] State Court Deposition of Patrick O'Connor, April 18, 1997, pp. 71-72 (Exhibit 8).
[94] *Id.*
[95] *Id.*
[96] *Id.* at 87-88.
[97] VPOTUS Reception list, October 23, 1996 (Exhibit 30).
[98] Testimony of Don Fowler before the Committee on Governmental Affairs, September 9, 1997.
[99] *Id.*
[100] *See* O'Connor & Hannan billing records (Exhibit 31).

contributions were intertwined with defeat of the Chippewas' application before the Department of the Interior.

A review of O'Connor's calendar is one of the clearest indications that campaign dollars were exchanged for influence in the decision making process at the Department of the Interior. On the day the application was denied, Patrick O'Connor wrote in his daily planner: "need to follow up with Harold Ickes at the White House, [Don] Fowler at the DNC and Terry Mac [Auliffe] at the Committee to reelect - outlining fundraising strategies."[101] In addition to the entry in O'Connor's calendar he also billed the St. Croix tribe for the fundraising discussions with Ickes, Fowler, and McAuliffe.[102] The fact that O'Connor was engaged in "follow up" discussions on the very day the Hudson application was denied indicates that fundraising dollars played a larger role in the decision than anyone is willing to admit.

Given the direct and circumstantial evidence indicating a political decision, it is hardly surprising that O'Connor's clients and the lobbyists against the Hudson application began contributing after the Chippewas' application was denied, and O'Connor had cemented the "fundraising strategy" with the White House, DNC and Clinton/Gore '96. Furthermore, two months later, on September 14, 1995, Patrick O'Connor and Larry Kitto sent out personal invitations encouraging opposition tribe members to attend $1,000 per person Presidential and Vice Presidential fundraisers.[103] In the invitation, O'Connor and Kitto reiterated their belief that President Clinton and his staff intervened on behalf of the opposing tribes: "As witnessed in the fight to stop the Hudson Dog Track proposal, the Office of the President can and will work on our behalf when asked to do so."[104] This feeling was also shared by at least one of the tribes who wrote to thank both the President and the DNC Chairman. The President of the Ho-Chunk Nation wrote to Chairman Don Fowler:

> On behalf of the Ho-Chunk Nation, I want to thank you for your help in the successful effort to defeat the Hudson casino. Numerous people contributed to the Department of Interior decision. You were particularly instrumental in helping the Department understand the significance and importance of their decision.[105]

President Clinton's efforts also did not go unappreciated: "On behalf of the Ho-Chunk Nation, I want to thank you for your role in the decision to deny the request to approve the Hudson casino."[106] Shortly before the decision to reject the application was made, at the time that the White House was getting involved in the Hudson application, Chairman Fowler received a memorandum from one of his staffers. This memorandum states:

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[101] Patrick O'Connor Datebook, July 14, 1995 (Exhibit 5).
[102] O'Connor & Hannan billing records, July 14, 1995 (Exhibit 31).
[103] Letter from Patrick O'Connor and Larry Kitto, September 14, 1995 (Exhibit 32).
[104] *Id.*
[105] Letter from JoAnn Jones to Don Fowler, August 3, 1995 (Exhibit 33).
[106] Letter from JoAnn Jones to President Clinton, August 3, 1995 (Exhibit 34).

"Craig Smith, White House Assistant to Political Affairs, and Judy DeAtley, DNC Western Political Desk, met this week with Indian representatives to discuss political and campaign strategies."[107] This memorandum indicates much greater coordination with Native Americans than previously known. It also includes material from Kevin Gover -- then a lawyer/lobbyist in the private sector and now the Assistant Secretary for the Bureau of Indian Affairs -- stating that: "[t]he tribes can be major financial players in California, Minnesota, Wisconsin, Florida, New Mexico, and Washington."[108]

It appears to be far from coincidental that this flurry of political activity involving Native Americans was taking place as the Department of the Interior was deciding to reject the advice of its own area and regional offices.

The Applicant Tribes Were Not Given The Opportunity To Cure Any Of The Application's Alleged Defects

While the opponents celebrated their victory and sent letters of appreciation to the President, the decision to reject the application took the applicant tribes by surprise. The applicant tribes have consistently complained that they were never consulted in advance about the alleged problems the Department of the Interior found in the application. This is a critical point, and the record supports this position.

The statutory language of Section 20, reads: "[land may be placed into trust if] the Secretary, *after consultation with the Indian tribe* . . . determines that a gaming establishment . . . would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community[.]"[109] It is true that members of the Interior Department met with tribal leaders, but the tribal leaders were not consulted about any problem which would have jeopardized the application. Indeed, the consultation that did take place resulted in both the Area and Regional office approving the application. There was no subsequent consultation that put the applicants on notice that the Secretary's office had identified problems that had not already been addressed or solved at the Area and Regional levels. Furthermore, there was no indication that the Department was going to change its policy just for the Hudson application and discard the standard that opposition, to be considered, had to be supported by "factual documentation."[110] Given the Department's role in the Sault Ste. Marie and Pequot applications to help facilitate accommodations with the local communities, there are strong indications that the decision may have been driven by political motives.

The conclusion appears to be inescapable: where contributors of large amounts of

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[107] Memorandum from Alejandra Castillo to Don Fowler, June 23, 1995 (Exhibit 35)

[108] Memorandum from Kevin Gover & Cate Stetson to Craig Smith & Judy DeAtley, June 19, 1995 (Exhibit 36).

[109] Section 20 of the Indian Gaming Regulatory Act has been codified at 25 U.S.C. § 2719 (b)(1)(A) (emphasis added).

[110] Hilda Manuel, in a letter to Representative Gunderson, stated that "any opposition should be supported by factual documentation." Letter from Hilda Manuel to Representative Steve Gunderson, March 2, 1995 (Exhibit 38). This issue is discussed fully in the next section of this chapter.

money were involved, the Secretary's office appears to have helped the contributors. In the Hudson application, the Secretary's office again helped the large contributors -- this time by failing to notify the applicants that the comment period had been reopened and then denying the application without informing the applicants of defects or providing a chance to cure the alleged defects.

David Jones, the Assistant United States Attorney representing the Department of the Interior in the ongoing law suit regarding this matter, identified the problem that the Department would face when it became clear that the applicant tribes had not been consulted about potential problems with the application. Jones wrote:

> Now that we have reviewed the administrative record in greater depth, we have determined that the alleged problems with the 2719 [Section 20 of IGRA] process are significant. We are primarily concerned about our ability to show that the plaintiffs were told about and given an opportunity to remedy the problems which the Department ultimately found were outcome-determinative. Area Directors are told to give applicants an opportunity to cure problems, and it will be hard to argue persuasively that applicants lose this opportunity once the Central Office begins its review.[111]

Jones goes even further to note:

> The administrative record, as far as we can tell, contains no record of Department meeting or communications with the applicant tribes in which the Department's concerns were expressed to the plaintiffs.[112]

The reason that there was nothing in the record is that the Department simply failed to identify such problems in advance. Had there been a problem that would appropriately have led to the rejection of the application, the Department of the Interior would have had some record of the problem. Furthermore, it is likely that at least one employee of the Department of the Interior would have told the applicants that there was a problem that would prove fatal unless cured.

The following exchange from George Skibine's deposition confirms David Jones' conclusion that the applicants were not given an opportunity to cure defects:

> Q: To clarify the meaning of my question, here were three poor tribes that had presented an application to the Department of the Interior, and you were making a determination as to whether to approve the application or deny the application. If you, as the director of the IGMS staff, identified a particular problem that might lead to the rejection of the application, did you consider it important to communicate that directly to the applicant tribes to give them an opportunity to cure the problem?

[111] Letter from David Jones to Scott Keep, February 14, 1996 (Exhibit 37).
[112] *Id.*

A: Good question. I don't think that I did that on this application, the first application I considered as head of the gaming office. If I were to do that again different now, you know, it might be different, it might be something I would consider doing, but at that time, I didn't do it. In other words, we did not[.][113]

Skibine elaborated further in the following exchange during his deposition:

Q: Now if you had shared the June 29 draft with the applicants, is it possible they might have come back and offered accommodations to the problems you identified?

A: If we had done more consultation with them and told them, yes, it's possible. We didn't do that in this instance.[114]

If the Department of the Interior was acting in good faith, it would have given the tribes an opportunity to cure the alleged defects. Because Interior acts as a middleman -- the collector of information supporting or opposing the application -- it has historically been responsible for keeping the tribes informed of problems. In other situations where political considerations were not driving the decision, Interior kept the applicants informed of the issues. In one case they even hired a mediator to solve the problems between the applicants and the local opponents.[115] Particularly given the fact that George Skibine recognized that the local opposition was "largely generated" by lobbyists opposed to the application,[116] it is legitimate to ask why a mediator would be hired in one case and not in another. One answer that naturally suggests itself is that to hire a mediator for the Mashantucket Pequots benefited Democratic contributors, and to hire a mediator for the three Chippewa applicants would have worked against Democratic contributors.

In the Hudson application, no one from DOI's central office even visited the proposed site in Hudson, Wisconsin, to see any of the alleged problems first hand. As for the central tenet of the rejection -- opposition by the surrounding communities -- the Department of the Interior went so far as to misrepresent to this Committee and to a federal judge the facts pertaining to support for the application.[117]

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[113] Deposition of George Skibine, January 13, 1998, p.61 (Exhibit 69).
[114] *Id.* at 121.
[115] *See* Deposition of Hilda Manuel, January 6, 1998, pp. 81-82.
[116] E-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward and Kevin Meisner, June 30, 1995 (Exhibit 46).
[117] As will be discussed later in this chapter, the Department of the Interior significantly misrepresented the amount of support for the application in the record submitted for the purposes of the federal litigation in Wisconsin. The Department of the Interior also failed to inform the court that their own Solicitor's office found opposition by elected officials to be irrelevant. *See* E-Mail from Kevin Meisner to Heather Sibbison, March 23, 1995 (Exhibit 56) In this E-Mail, Meisner states that he is also sending the E-Mail to another Department of the Interior lawyer named Tim Elliot "who should be able to shed some further light on this question." No documents were produced to this Committee regarding Mr. Elliot's position on

The Department Changed its Policy Regarding Off-Reservation Applications Just Before Deciding Hudson

It is clear that the Department would have acted appropriately if it made a finding, supported by fact, that the proposed Hudson casino would have been a "detriment to the surrounding community." Because the record did not support such a finding, the Secretary's office changed the approach to evaluating off-reservation gaming applications, and decided that unsupported opposition within the community would be enough for a finding that the proposal would be a detriment to the surrounding community. In its rejection of the application, the Department has morphed the Section 20 "detrimental to the surrounding community" standard into a policy that the existence of opposition to an application is a "detriment to the surrounding community."

The Department of the Interior has not publicly discussed this policy change. In communications obtained by this Committee pursuant to subpoena, however, Department officials have admitted that a new policy was used to decide the Hudson application. Furthermore, it is clear that the applicants were not informed of the new ground rules for deciding their application.

One clear statement that a new policy was used to decide the Hudson application is found in an internal communication between Secretary Babbitt's Special Assistant Heather Sibbison, and Michael Gauldin, a Department spokesman responsible for answering questions about the Hudson decision. Almost two-and-a-half years after the decision was made, Sibbison – who was also the go-between with the White House for the Hudson matter – made the following statement in a confidential internal e-mail:

> [I]t has been our position, *first articulated in Hudson*, that expressed opposition from local elected officials essentially is prima facie evidence of detriment.[118]

David Jones, the Department of the Interior's own attorney in the civil litigation in Wisconsin, adds to our understanding of Sibbison's statement:

> The second, and related, problem is that *the Department appears to have changed its past policy* of requiring "hard" evidence of detriment to the community. The plaintiffs will therefore argue that they had no notice, either through past policy or through direct Departmental communication, that the "soft" concerns expressed by local officials would jeopardize their application.[119]

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this matter. Notwithstanding Mr. Elliot's potential role as a witness in this matter, however, Elliot represented all Department of the Interior employees in depositions taken by this Committee.

[118] E-Mail from Heather Sibbison to Michael Gauldin, December 16, 1997(emphasis added) (Exhibit 54).

[119] Memorandum from David Jones to Scott Keep, February 14, 1996 (emphasis added) (Exhibit 37).

Even more enlightening is George Skibine's explanation of the role of Counselor to the Secretary John Duffy. Skibine noted:

> The Department (Duffy) made a decision that the opposition of the local communities was evidence per se of detriment, and that the Department was not going to require the communities for detailed evidence to back up their opposition.[120]

This was a departure from Department practice and established a new standard to assess trust applications. It is certainly a departure from Acting Deputy Commissioner of Indian Affairs Hilda Manuel's letter to Representative Gunderson -- drafted just four months before the rejection -- which pointed out that "any opposition should be supported by factual documentation."[121] Thus, in the Hudson case, Babbitt's counsel established a new policy – one not articulated anywhere or shared with any of the applicants.

Further illustrating the departure from what was standard practice up until the Hudson application, Kevin Meisner, an attorney at the Department of the Interior, disagreed with Duffy's decision and wrote a memorandum to a number of Department employees involved in the Hudson decision (Troy Woodward, George Skibine, Paula Hart, Tom Hartman and Larry Scrivner). Meisner stated:

> My view on this matter is that the bald objections of surrounding communities including Indian tribes are not enough evidence of detriment to the surrounding communities to find under Section 20 of IGRA that the acquisition for gaming will be detrimental to the surrounding communities.
>
> Specific examples of detriment must be presented by the communities during the consultation period in order for us to determine that there will be actual detriment. A finding of detriment to surrounding communities will not hold up in court without some actual evidence of detriment. In this case the gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the

[120] Memorandum from George Skibine to Scott Keep, Assistant Solicitor, August 5, 1996 (Exhibit 51). Heather Sibbison characterizes Duffy as the person "most centrally involved" in the decision. Although he did not have the actual decision making authority, Sibbison answered in the affirmative when asked if Duffy "was much more involved in meetings and deliberations about this particular application than Mr. Anderson." Deposition of Heather Sibbison, Senate Committee on Governmental Affairs, September 26, 1997, p. 118-119. In a memorandum prepared by Troy Woodward, Duffy's role is further explained: "Duffy thinks that the local communities may veto off-reservation Indian gaming by objecting during the consultation process of Section 20. I expressed the opinion, advocated by George [Skibine] and which we have used to evaluate objections in the past, that the consultation process does not provide for an absolute veto by a mere objection, but requires that the objection be accompanied by evidence that the gaming establishment will actually have a detrimental impact (economic, social, developmental, etc.)." Memorandum by TMW [Troy Woodward], July 6, 1995 (Exhibit 77).

[121] Letter from Hilda Manuel to Representative Steve Gunderson, March 2, 1995 (Exhibit 38).

surrounding community. [122]

In addition to making the point about unsupported objections not being sufficient to establish detriment to the community, Meisner provides a clear window into what actually happened prior to the revisions and political cover-up following the decision. By pointing that the "gaming office did not think that the information obtained during the consultation period was enough to show actual detriment to the surrounding communities," a dispassionate observer can only wonder what Secretary Babbitt meant when he told this Committee that "the Department based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act." [123] If Section 20 requires a finding that an application not be a detriment to the surrounding community, and Secretary Babbitt maintains that the decision was based on Section 20 of IGRA, and his own staff stated eight days before the rejection that the gaming office did not have evidence of actual detriment, there should be little surprise that this Committee has a significant problem with the following language from the rejection letter: "Because of our concerns over detrimental effects on the surrounding community, we are not in a position, on this record, to substitute our judgment for that of the local communities directly impacted by this proposed off-reservation gaming acquisition." [124]

Two significant problems flow from this policy change: (1) the applicants were not informed that new rules were being invented for, and applied to, their application; and (2) the abrupt shift in policy defied a valid Presidential directive prohibiting the Department from changing policy without providing advance notification to the tribes. [125] Indeed, the change of policy conflicts with Section 20 of IGRA, which requires "consultation with the Indian tribe" [126] prior to a determination that the proposal would be a detriment to the surrounding community. It can hardly be argued that the Secretary consulted with the applicants if they were unaware that a new policy was being used to consider the application.

George Skibine, allegedly the key decision maker in the rejection of the application, lends support to a statement by Sibbison that the Department had changed its policy. In an e-mail to Hilda Manuel, Bob Anderson, Heather Sibbison, Michael Anderson, Scott Keep, Dave Etheridge, Tom Hartman and Nancy Pierskalla, dated March

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[122] Memorandum from Kevin Meisner to Troy Woodward, George Skibine, Paula Hart, Tom Hartman, and Larry Scrivner, July 6, 1995 (Exhibit 52).
[123] Testimony of Secretary of the Interior Bruce Babbitt, January 29, 1998, p. 776.
[124] Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania and Arlyn Ackley, Snr., July 14, 1995 (Exhibit 2).
[125] President's Memorandum for the Heads of Executive Departments and Agencies: Government-to Government Relations With Native American Tribal Governments, 59 Fed. Reg. 22951 (1994). In pertinent part, this Memorandum states: "In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following: . . . (b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals" (Exhibit 66).
[126] 20 U.S.C. § 2719 (b)(1)(A).

17, 1997, he states:

> Plaintiffs informed us that a pivotal question in their decision to resubmit an application is whether the Department again stand by its position that the "naked" political opposition of the surrounding communities without factual support is enough for the Secretary to refuse to make a finding that the proposed acquisition is not detrimental to the surrounding community. . . . We told them we would confer with policy makers within the Department and let them know the outcome. . . . I think that it is a fair question for plaintiffs to ask. [127]

It is significant that Skibine does not take issue with the fundamental premise of the question. This admission that "factual support" was absent from the decision goes directly to the question of whether the decision was improperly made, and whether the Department has tried to cover up this fact. The Committee is left with a significant question: Why would "naked" political opposition without factual support ever be a legitimate reason to deny an application? Prior to Hudson, it was not a sufficient reason and nowhere in the record is there a discussion of why the Department felt compelled to change the policy without even notifying the parties that there had been a change. Again, the circumstantial evidence points to an improper motive.

Secretary Babbitt made his position clear in a statement to the *New York Times*: "This department does not force off-reservation casinos upon unwilling communities." [128] However, prior to the Hudson decision, mere opposition was not enough – there had to be an objective showing of detriment. For example, in her letter to Representative Gunderson, Hilda Manuel stated:

> You request clarification on whether or not the Bureau of Indian Affairs (BIA) considers the views of parties opposing a fee-to-trust acquisition by a tribe for gaming purposes. Because of the contentious nature of fee-to-trust acquisitions for gaming purposes, public sentiment and concerns of the negative impacts of casino gambling are two of the several issues that are common. The Department of the Interior (Department) is sensitive to these issues. Consequently, we want to take this opportunity to assure you that comments opposing fee-to-trust acquisition receive the highest consideration during the review process. However, *it is important to point out that any opposition should be supported by factual documentation. If the opposing parties do not furnish any documented evidence to support their position, it is difficult, if not impossible, to make a finding that the acquisition is not detrimental to the surrounding community as required by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719.*"[129]

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[127] E-Mail from George Skibine to Hilda Manuel, March 17, 1997 (Exhibit 57).
[128] Secretary of the Interior Bruce Babbitt, *Letter to the Editor*, The New York Times, January 4, 1998.
[129] Letter from Hilda Manuel, Acting Deputy Commissioner of Indian Affairs, to Hon. Steve Gunderson, March 2, 1995 (emphasis added) (Exhibit 38).

The commonsense rationale for this standard is obvious: opposition based on racism, for example, would hardly be an acceptable reason for rejecting an application. Thus, to be a part of the decision making process, "factual documentation" of opposition was always required prior to Hudson. George Skibine, during his deposition, understood this concept. When asked whether he would accept a claim of opposition and a claim of harm "without any research," he replied:

> No; I think that we would need to look at what justification you submit.[130]

The weakness of the Department's position regarding the Hudson application is illustrated by an exchange between Committee counsel and Mr. Skibine during his deposition:

Q:	[A] longtime Hudson business person wrote in support [of the application] and states that the opposition to the acquisition is receiving money from opposing Indian tribes. Is this an observation that you investigated at the time you were analyzing whether to approve or reject the application?
Skibine:	No, it was not an allegation we investigated.
Q:	Do you know whether it is correct or incorrect?
Skibine:	No, I don't know whether it is correct or incorrect.
Q:	Would it make a difference if it was correct?
Skibine:	I think that if it was correct, it would make a difference, yes.[131]

Given that the Department of the Interior was basing its rejection – at least according to the Department – on opposition from the local community, it would seem that fundamental fairness would have required an inquiry into whether it was true that people were receiving money for their opposition to the application. Forced to admit that it would have made a difference if the allegation were true, Skibine has essentially conceded the Department's case – the Department failed to examine a potentially dispositive factor, which makes it well-nigh impossible to argue that "the right decision was made in the right way and for the right reasons."[132]

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[130] Deposition of George Skibine, January 13, 1998, p. 44.
[131] *Id.* at p. 133.
[132] Testimony of Secretary of the Interior Bruce Babbitt, January 29, 1998, p. 769.

Indeed, the Department's intellectual position is even worse. By changing the policy to allow opposition to constitute a prima facie case of detriment to the community, as Sibbison stated in her e-mail to Michael Gauldin, [133] the Department is conceding that it would be acceptable in future cases if the opposition was bought by a special interest or, in the extreme, the opposition was grounded on a racist reaction to the applicant. In the final analysis, the failure of the decision makers to look beneath the surface of the opposition makes it appear that they were less interested in a fair decision than in arriving at a predetermined goal, by whatever means necessary.

In the Hudson application, there was certainly opposition. There was also, however, support for the application, and it appears that quantitatively there was more support than opposition. Perhaps more important to the making of a principled decision, there is hardly any "factual documentation" to back up the opposition. Furthermore, to return to the point emphasized in the previous section, there was no opposition that was beyond cure if the applicants had been informed of the basis for the opposition. In addition, as will be discussed later, the Department misrepresented the amount of support for the application before this Committee and a federal court. Given the importance placed on community opposition, this leads to a serious concern that the quantity of support and opposition was manipulated in order to validate the pre-determined outcome of the Hudson application denial.

The Reasons Advanced for the Rejection of the Application are Contradicted by Information Obtained by this Committee

A review of the recommendations prepared by the career professionals working for the Department of the Interior gives insight into not only what the career civil servants were thinking, but also what the applicant tribes were expecting from their meetings with Interior officials. The Finding of No Significant Impact (✌FONSI),[134] the first Area Office recommendation, [135] the second Area Office recommendation, [136] the recommendation from the Indian Gaming Management Staff (IGMS), signed by Thomas Hartman (the IGMS economic specialist) [137] and George Skibine's re-draft of the IGMS memorandum, [138] all support the conclusion that the application was on its way to being approved by the career professionals at the Department of the Interior. The only letter or memorandum to the contrary is Michael Anderson's three page rejection letter written on

[133] E-mail from Heather Sibbison to Michael Gauldin, December 16, 1997 (Exhibit 54).
[134] Finding of No Significant Impact, September 14, 1994 (Exhibit 41).
[135] Memorandum from Denise Homer, Area Director to Ada Deer, Assistant Secretary - Indian Affairs, November 15, 1994 (Exhibit 42).
[136] Memorandum from Denise Homer, Area Director to Ada Deer, Assistant Secretary - Indian Affairs, April 20, 1995 (Exhibit 43).
[137] Memorandum from Indian Gaming Management Staff to the Director of the Indian Gaming Management Staff, June 8, 1995 (Exhibit 44). Although it was marked "draft" it was signed by Thomas Hartman.
[138] Memorandum from George Skibine to Assistant Secretary - Indian Affairs, undated (Exhibit 45). Skibine denies that he had any input into this memorandum.

July 14, 1995.[139] Indeed, it is particularly troubling that there are no memoranda recommending that the application be rejected. One reasonable conclusion as to why no such memoranda were prepared is that the facts, as developed, did not support such a position being committed to paper.

The three page rejection letter signed by Michael Anderson points to "detriment to the surrounding community" as the reason for the denial. However, George Skibine, allegedly the most important of the decision makers, made the following statement in an internal memorandum after the decision was made:

> It is true that extensive factual findings supporting the local communities' objections are nowhere to be found."[140]

This is a crucial point considering that Skibine acknowledges: "The point here, and a very crucial one, is that the Department has to rely on the record, and the opposition of the local communities in the record is the evidence relied upon." [141]

Supporting Skibine's after-the-fact recognition that "extensive factual findings supporting the local communities' objections are nowhere to be found," [142] is an acknowledgment by him that as of June 30, 1995, just two weeks before the rejection, the IGMS had tentatively reached the conclusion that the application would not be detrimental to the surrounding community:

> Tom Hartman of my staff also prepared a memo regarding the section 20 "not detrimental" analysis. Unfortunately, I have not been able to finish the review because of computer difficulties. *Our* tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community. [143]

Of particular interest to the Committee is the timing of this e-mail when compared to other correspondence from the Secretary's office. On June 6, 1995, *before* Skibine stated that the record indicated that the proposal would not be detrimental to the surrounding community, Heather Sibbison, Special Assistant to Secretary Babbitt, relayed to the White House that Interior was "95% certain that the application [would] be turned down." [144] On June 27, 1995, Sibbison wrote to the White House indicating that the application would be denied, and the decision "may be made public at the end of the week." [145] This leads to a fundamental question: how could the decision based on Section 20 have followed the recommendations of career officials if three days after Ms. Sibbison had confirmed the

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[139] Letter from Michael Anderson to Rose Gurnoe, Alfred Trepania, and Arlyn Ackley, Sr., July 14, 1995 (Exhibit 2).
[140] Memorandum from George Skibine to Scott Keep, August 5, 1996 (Exhibit 51).
[141] *Id.*
[142] *Id.*
[143] E-Mail from George Skibine to Heather Sibbison, June 30, 1995 (emphasis added) (Exhibit 46).
[144] Memorandum from David Meyers to Jennifer O'Connor, June 6, 1995 (Exhibit 20).
[145] Memorandum from Heather Sibbison to Jennifer O'Connor, June 27, 1995 (Exhibit 22).

application's denial to the White House, Skibine indicated that the IGMS position was that the application would "not be detrimental to the surrounding community."

Skibine's statement about "our tentative conclusion" is consistent with representations made in the record about impact on the community. For example, the Indian Gaming Management Staff (IGMS) made the following observations about "detriment to the community:"

> Staff finds that detrimental impacts are appropriately mitigated through the proposed actions of the Tribes and the Agreement for Governmental Services. It finds that gaming at the St. Croix Meadows Greyhound Racing Park that adds slot machines and blackjack to the existing Class III pari-mutuel wagering would not be detrimental to the surrounding community[.][146]

Inconsistencies such as the one between this statement and Michael Anderson's rejection letter lead to the justifiable suspicion that the decision was made for reasons other than those publicly advanced. Furthermore, how could the applicants have addressed the perceived "defect" if the record did not support an argument that the "defect" existed?

Another clear contradiction of the rationale advanced in the July 14, 1995, rejection is found in an e-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward and Kevin Meisner. Skibine states:

> I also sense that even if the Town of Hudson and the Town of Troy embrace the proposal, we may still not change our position because of political opposition on the Hill, largely generated by the Minnesota and Wisconsin Tribes who oppose this acquisition. [147]

This admission makes a mockery of Secretary Babbitt's assertion that the decision was "the right decision made in the right way and for the right reasons." [148] After spending so much effort in attempts to convince Congress that the decision was predicated on local opposition, this e-mail shows that Skibine understood that the Department of the Interior was prepared to disregard the views of both Hudson and the closest neighboring town. Indeed, even the Governor of Wisconsin understood that there was support for the application. When asked if the December 1992 referendum in Hudson indicated local

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[146] Memorandum from The Indian Gaming Management Staff to the Director of the Indian Gaming Management Staff (George Skibine), June 8, 1995. (Ex. 44) The memo was signed by Mr. Hartman even though there is a stamp located on the bottom of the document indicating "Draft." Additionally, Mr. Hartman in his deposition indicated that the memo was a compilation of views from a number of the staff. *See* Deposition of Thomas Hartman, December 8, 1997, pp. 81-82.

[147] E-mail from George Skibine to Heather Sibbison, Paula Hart, Tom Hartman, Troy Woodward and Kevin Meisner, June 30, 1995 (Exhibit 46).

[148] Testimony of Secretary of the Interior Bruce Babbitt, January 29, 1998, p. 769.

support, Thompson replied "Yes."[149]

Heather Sibbison also expressed concerns that it might not be wise to include references to other Native American opposition to the Hudson application. In an e-mail two weeks before the rejection, she stated:

> [W]e may not want to include in our rationale the opposition of the other tribes, because I think it is possible that if the three Tribes came back with stellar support from their local towns and Congressman, we might look at the proposition in a new light – but even in that case, the Minnesota tribes will still be against it. And also, I agree with Collier's uneasiness about some tribes getting all of the goodies at the expense of other tribes – theoretically they all should have equal opportunities. [150]

Sibbison's observation is curious because it stresses political factors and not legal factors. Her concern that there would be a problem with the perception of certain tribes "getting all the goodies" appears to have no place in a principled decision, made on the merits.

The record provides no indication of what came to light between June 30 -- when Skibine stated that "our tentative conclusion is that the record permits us to make a finding that a gaming establishment at that location will not be detrimental to the surrounding community" -- and July 14, when Anderson rejected the application. Because there is no indication in the record of what could have changed the minds of the staff, it is reasonable to conclude that "detriment to the surrounding community" was the pretext for the rejection, and that the failure to announce that the Department was changing its policy in this case was necessary because the debate would have become infinitely more complicated, and the grounds for appeal to federal court would have been strengthened.

Political Considerations Appear to Have Influenced the Decision

Secretary Babbitt has said publicly that the Hudson decision was the "right decision made in the right way for the right reasons." [151] A review of the above material does not support this statement. It is simply inexplicable for the Department to have made a decision without support in the record for that decision. Furthermore, but for political considerations, it seems the Department could have delayed the final decision in order to provide the applicants a chance to remedy any alleged defects.

In addition, lobbyists' notes of meetings with Interior staff call into question the integrity of Interior's decision making process. In a May 25, 1995, memo lobbyist Scott

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[149] Doug Stohlberg, *Thompson Says He "Won't Stop" Casino at Dog Track*, Hudson Star Observer, February 10, 1994 (Exhibit 71).
[150] E-mail from Heather Sibbison to George Skibine and Troy Woodward, June 30, 1995 (Exhibit 75).
[151] Testimony of Secretary Bruce Babbitt, January 29, 1998, 769.

Dacey discussed meetings with Mike Anderson, George Skibine and Thomas Hartman. In these meetings the process for reviewing the application under section 20 of IGRA was discussed. As of this meeting Michael Anderson apparently not only did not want to establish a precedent against tribes wishing to bring land into trust into the future, he also acknowledged that the law was not on their side. [152]

Dacey went on to explain that "[r]eaching the "detrimental" standard is difficult [to establish]. According to Tom Hartman, all of the economic impact statements are of no value in this assessment. The addition of a new Indian gaming establishment to the market area brings 'normal competitive pressures." [153] When asked about competitive pressure and the role it played in finding "detriment," Hartman had the following response:

> The only policy I was aware of, and it was articulated verbally by the Deputy Commissioner of Indian Affairs, was that economic competition was "not detrimental," that we couldn't pick one tribe out over another. And even from a business standpoint, the reason you have a McDonald's on one corner and a Burger King on another and a Wendy's on the third corner is because there are synergisms in a lot of these, so you can't -- it is very difficult from an econometric standpoint to say, when you add another casino that it ruins everybody else's business. If that was the case, then the second person moving into Las Vegas would have ruined it for everybody, and I think we know that that is not the case. [154]

According to Dacey, Mike Anderson relayed that the Department was "trying to keep this issue on the merits" and would "try to thread the needle on this request." [155] The memo concluded:

> Things might change when the politicians like Babbitt and Duffy become involved, but without the law on their side it will be difficult to kill the deal."[156]

On July 14, 1995, the Department of the Interior did in fact "kill the deal." The Department relied upon a finding of detriment in the face of the career professionals who had stated that there was no articulated detriment. Interestingly enough, Dacey noted in his memo that if Babbitt were to come out against the Hudson application he would "find his excuse in Section 151." [157] It is significant that a lobbyist for the opponents was being briefed on the legal analysis at the Department, while the applicants were being told nothing. Indeed, given what was discovered during the Committee's investigation, it is reasonable to speculate that Interior officials did not inform the applicant tribes about

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[152] Memorandum from Scott Dacey to Debbie Doxtator, May 25, 1995 (Exhibit 53).
[153] *Id.*
[154] Deposition of Thomas Hartman, December 8, 1997, p.37.
[155] Memorandum from Scott Dacey to Debbie Doxtator, May 25, 1995 (Exhibit 53).
[156] *Id.*
[157] *Id.*

perceived problems because either the problems were not supported by past practice and current fact, or the concern that by identifying "problems," the applicants would have an opportunity to cure. Given the obvious preferential treatment given the opponents of the application, there appeared to be little interest in allowing the applicants an opportunity to address the Department's concerns. Although George Skibine now states that he would have done things differently, it is hard to believe that Interior officials would not have worked with the applicant tribes – unless the ulterior motive was to help the opponents achieve their objective.

It is significant that the Department was prepared to take the unprecedented step of rejecting the application for off-reservation gaming using a 151 analysis. Kevin Meisner confirmed this when he wrote on July 11, 1995, "I thought after the Friday meeting that everyone (except Duffy who we had not yet consulted) agreed that there was not enough evidence supporting a finding of "detriment" to the surrounding community under section 20 and therefore we would decline to acquire the land under 151." [158] Notwithstanding the fact that "everyone" agreed the decision could not be made under Section 20, Secretary Babbitt has repeatedly said that the Department based its decision solely on the criteria set forth in Section 20. [159]

Perhaps even more revealing, the Department of the Interior was prepared to reject the Chippewas' application even if the local officials were uniformly behind the application. George Skibine, in an E-Mail to Sibbison, Hart, Hartman, Woodward and Meisner stated: ✌I also sense that even if the Town of Hudson and the Town of Troy embrace the proposal, we may still not change our position because of political opposition on the Hill, largely generated by the Minnesota and Wisconsin Tribes who oppose this acquisition. [160] This is a curious conclusion in that the question of Congressional participation had already been addressed by the Department's solicitors office. Kevin Meisner, an attorney for the Department, stated prior to the final resolution: ✌I think the question of whether a Congressman can participate in the state consultation process for taking land into trust for gaming under IGRA (25 U.S.C. 2719(b)(1)(a)) should be answered in the negative. . . . My feeling is that it would not be appropriate for Federal Congresspersons to comment[.]"[161] Skibine's statement that the application would be rejected even if there was complete support from the affected towns, shows the transparency of the Secretary's claim that the Department made the right decision for the right reasons.

Thomas Hartman stated under oath that Interior was concerned about the political

[158] E-Mail from Kevin Meisner to George Skibine and Troy Woodward, July 11, 1995 (Exhibit 55).
[159] Testimony of Secretary of the Interior Bruce Babbitt, January 29, 1998, p. 776.
[160] E-Mail from George Skibine to Heather Sibbison, June 30, 1995 (Exhibit 46).
[161] E-Mail from Kevin Meisner to Heather Sibbison, March 23, 1995 (Exhibit 56). It is somewhat ironic that discussion of this matter during Committee hearings often that such opposition by elected leaders. Meisner' position that such opposition was not relevant is the only expression of Department policy produced by the Department pursuant to the Committee's document request and subpoena, and it is curious that many argued such opposition was relevant when the Solicitor's office at Interior indicated that it was not.

ramifications of Interior approving the application and a Republican Governor rejecting it. Hartman had the following to say:

> In the meetings I had been in, the negatives of taking the land into trust had certainly been discussed. A concept that had been tossed out was that in a Democratic administration and a Republican governor, to ignore the local input and impose a casino on an unwilling community and then have the Republican governor say, well, look at those ridiculous Democrats doing this again, was not viewed as being the best position to be in. So I know when they say "probably a bad idea to create a land trust," there were plenty of ideas thrown out to indicate that some people in those meetings thought it was a bad idea to create a land trust in this case. [162]

Whether Democrats would suffer political consequences for following the law and past Department of the Interior practice should never have even been considered as a factor in the decision making process.

Michael Anderson – Decision Maker or Political Puppet?

When asked whether he was the decision maker in the Hudson case, Michael Anderson, the Deputy Assistant Secretary for Indian Affairs, stated "That is correct." [163] Despite this assertion, evidence reviewed by the Committee showed that Anderson appeared to play little or no role in the actual decision. Anderson admitted that he spent only 4-5 hours on the Chippewas' application and that he did not read or review the 32 page recommendation to approve the application provided by the Department's area office.[164]

Anderson did, however, express a concern about the detrimental impact that the casino would have on the nearby St. Croix Chippewa. When asked about this, he had the following exchange:

> A: I believe the nature of the concern was that they had developed a market for the casino in that area, and that they felt that there would be a detrimental impact to their market if another casino was located nearby. I believe they also may have provided studies to that effect as well.
>
> Q: So correct me if I'm wrong, it is a valid opposition for an opposing tribe to object on economic grounds?
>
> A: Yes, and the letter states that as a factor.[165]

[162] Deposition of Thomas Hartman, December 8, 1997, p. 54.
[163] Deposition of Michael Anderson, January 14, 1998, p. 38.
[164] Senate Deposition of Michael Anderson, September 26, 1997, pp. 66-67.
[165] Deposition of Michael Anderson, January 14, 1998, pp. 24-25.

After Committee lawyers pressed Anderson, he admitted that he was aware that the St. Croix tribe gaming operation was "very profitable." [166] Although Anderson was aware of the general financial status of the St. Croix tribe he testified that he did not review any of the market information provided to the Department regarding the impact of the Hudson application and relied solely on the staff for this information.

> A: I didn't review specific market information. I was informed by the staff, the Indian Gaming Management Staff, that there was an impact and that was also contained in the letter, the decision letter as well. There may have been discussions about the location and the market area that was developed by St. Croix, but I don't recall any specifics.
>
> Q: Do you recall who on the Indian Gaming Management Staff told you that, or communicated that to you?
>
> A: I don't remember who the major staff advisors on the market impact would have been. George Skibine and Tom Hartman. [167]

This testimony is of particular interest because Hartman, the economic specialist for the Indian Gaming Management Staff, has testified that a casino in Hudson would not have had a detrimental impact on the surrounding community. Hartman also signed a memorandum compiled by the Indian Gaming Management Staff to this affect and included an analysis of the detriment on surrounding tribes. [168] Michael Anderson, however, had never seen or been told of this analysis before he signed the rejection letter on July 14, 1995.[169] If Anderson was not aware of the analysis compiled by the staff responsible for reviewing these applications, he must have received direction from another source.

There are numerous additional examples of Anderson being unaware of significant information. For example, he was not aware of a contract for services signed by the applicant tribes and the community authorities in Hudson, Wisconsin, which would have mitigated a number of the concerns and objections mentioned in the actual rejection letter.[170] Anderson also was unaware that Heather Sibbison had sent letters to the White

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[166] *Id.*
[167] *Id.* at 28.
[168] *See* memorandum from Indian Gaming Management Staff to Director Indian Gaming Management Staff, June 8, 1995 (Exhibit 44).
[169] Deposition of Michael Anderson, January 14, 1998, p. 29.
[170] *Id.* at 70-71. *See also* Agreement for Government Services (Exhibit 70). Attached to the Agreement is a letter from the Mayor of Hudson stating: "I think you will find, as you review the attached material, that the City of Hudson has a strong vision and planning effort for the future and that this proposed Casino can apparently be accommodated with minimal overall impact, just as any other development of this size." Also attached is a referendum showing that a majority of those who cast ballots were supportive of the proposed casino.

House indicating how the decision would be made.[171] This is critical because Sibbison sent these letters to the White House before George Skibine had prepared his first draft of the denial letter on June 29, 1995. Anderson testified that not only did Heather Sibbison not consult him on these letters, but he was unaware that the Department of the Interior's position had ever been communicated to the White House.[172]

Notwithstanding his representations to the contrary, it appears that Anderson's role in the decision making process was limited. His conduct in this matter is consistent with that of someone who was going along with a decision already made, and his failure to inquire about any of the salient facts, and his obvious concern for the wealthy Democratic contributors opposed to the application, raise serious questions about his involvement.

CONTRADICTIONS AND CHANGING STORIES

In addition to the major contradictions already discussed, including the contradiction between Secretary Babbitt and Paul Eckstein regarding contacts with Harold Ickes, whether the Secretary mentioned political contributions by the opposing tribes to Democratic organizations, Secretary Babbitt's belief that his letters to Senator McCain and Senator Thompson were consistent, and Babbitt's statement that the decision was based solely on section 20 of IGRA, there are a number of other contradictions which require further explanation.

Was The President Contacted About The Hudson Application After The Initial Meeting With Patrick O'Connor ?

There is contradictory testimony over whether Tom Schneider, a lobbyist at O'Connor & Hannan and good friend of the President's, communicated with the President about the Hudson dog track application. O'Connor & Hannan billed a total of $4,000 to their clients for Tom Schneider's time on the dog track matter, a fact that was initially withheld from this Committee.[173] In fact, the billing entry unambiguously reads: "meeting with senior White House staff and POTUS [President of the United States] re. Expansion of gaming and the dog track and opposition to doing so."[174]

Schneider has testified that O'Connor asked him to stop by an event at the Mayflower hotel because the President was there for an event.[175] Schneider did stop by the event: **"**I talked to [the President] for a few minutes, did not say anything about the Hudson Dog Track, and saw Harold Ickes there. Ickes said "that he had told Pat that he was going to look into it. I said to Harold that I thought that it deserved looking into and

[171] Senate Deposition of Michael Anderson, September 26, 1997, p.29.
[172] *Id.* at 29-31.
[173] *See* O'Connor & Hannan billing records (Exhibit 31).
[174] *Id.*
[175] Deposition of Thomas Schneider, December 10, 1997, p. 15.

I would appreciate it if he would.[176] He further clarified his communication with the President by stating: "I absolutely did not talk to the President then or ever about the dog track and the Indians.[177]

Schneider's story is contradicted by Thomas Corcoran, a former member of Congress and fellow partner of Schneider's at O'Connor & Hannan. Corcoran noted:

> The only other contact that I know of with respect to anybody from O'Connor & Hannan with the President was a casual contact, not really a lobbying contact, that Tom Schneider told me about, as I recall a day or so after it happened. Mr. Schneider is a good friend of the President. He was attending a reception, I believe at the White House, and they were just chatting. And in the course of that chat the President indicated that Pat O'Connor had mentioned this dog track to him. They both had a pretty good laugh about the fact that the President of the United States had been informed about a dog track in Wisconsin, and I must say that Tom and I had a pretty good laugh about it as well.[178]

This version of events is supported by Schneider's billing records at O'Connor & Hannan. The billing entry reads as follows: "Indian matter regarding racetrack gaming and Hudson dog track. Telephone discussion and meeting with senior White House staff and POTUS [The President] re[garding] expansion of gaming and the dog track and opposition to so doing."[179]

Fred Havenick Was Told That The DNC & Clinton/Gore '96 Played A Significant Role In The Hudson Rejection

Fred Havenick, the owner of the existing dog track in Hudson, Wisconsin , attended a Democratic fundraiser in Florida on August 15, 1995. At this fundraiser, Havenick spoke with Terry McAuliffe, the Clinton/Gore '96 Finance Chairman. The following is Fred Havenick's sworn testimony before the Committee on Government Reform & Oversight:

> [J]ust a month after the rejection. I was at a fund-raising event in Florida where I ran into Terry McAuliffe, chairman of the finance committee for the President's re-election campaign. After the meeting, I went to say hello to Terry. I've known Terry for quite some time, mostly through his political activities. At the same time, Terry approached me with a large smile on his face and said, what's doing in doggiedom? I said that we were having an enormous problem with an Indian gaming project in northern Wisconsin. He said, oh, I know all about that; to which I responded, come into my

[176] *Id.*
[177] *Id.* at 19.
[178] Deposition of Thomas Corcoran, December 10, 1997, P.30.
[179] O'Connor & Hannan Billing records, October 2, 1995 (Exhibit 31).

> office, a private corner of the meeting room. I recall that Terry said, *I took care of that problem for you.* I was baffled and asked him what he meant. I recall that he said, *I got Delaware North's Indian casino project killed*, the one that would have competed with you. I set up the meeting with Fowler and others and turned it around. I told Terry that was my project and I was the one who owns the track in Hudson. His face dropped. He was clearly in shock and said little else. [180]

McAuliffe clearly thought he was helping a Democratic contributor when he helped "kill" the application. Terry McAuliffe had known Havenick for quite some time through his activity as a Democratic contributor. This relationship began in the mid-1980s when Havenick and McAuliffe were both members of the Democratic Senatorial Campaign Committee. Havenick also came into contact with McAuliffe at numerous Democratic fundraising events. [181]

A Meeting at Lac Courte Oreilles Produced Diametrically Opposed Affidavits From the Department of The Interior and The Applicant Tribes.

On December 3, 1996, George Skibine went to a meeting at the La Courte Oreilles reservation to meet with members of the applicant tribes. This meeting was set up because of a potential settlement arrangement with the law suit filed by the tribes against the Department of the Interior. According to a number of people who attended the December 3, 1996, meeting the following exchange occurred:

> Q: How did [the application] not get approved the first time?
>
> A: We approved it, but when it got to the Secretary's office politics took over.[182]

Frederick R. Roach, Fred Havenick, Mary Ann Polar, Peter A. Liptack, J.W. Cadotte, Arlyn Ackley, Sr, and DuWayne Derrickson all signed affidavits to this effect. In response to these sworn affidavits, the Department of the Interior produced affidavits from individuals with a differing recollection of events. [183] Skibine in his testimony had this to say about the meeting:

> We were contacted by the Lac Courte Oreilles tribe to come to Wisconsin to discuss with them the problems that the Wisconsin tribes had with the upcoming renegotiation of their Class III gaming contracts with the State

[180] Testimony of Fred Havenick, January 21, 1998, pp. 117-118 (emphasis added). Terry McAuliffe was not deposed by this Committee. He did, however, dispute the accuracy of Havenick's account.
[181] *Id.*
[182] *See* Affidavits of Frederick R. Roach, Fred Havenick, Mary Ann Polar, Peter A. Liptack, J.W. Cadotte, Arlyn Ackley, Sr, and DuWayne Derrickson (Ex. 58).
[183] *See* Affidavits of Nancy Pierskalla, Troy Woodward, Tim LaPointe, Paula Hart, and Robin Jaeger (Exhibit 59).

> of Wisconsin. And we agreed to come there to make a presentation about compact negotiation. At the same time, the tribes asked us to come and discuss with them, the three tribes, either the day before, to discuss with them and give technical advice on placing land in trust, in general. We clarified to them that we could not and would not discuss the Hudson -- the litigation involving the Hudson Dog Track at this meeting . . . we made that absolutely clear to the Lac Courte Oreilles tribe that this was not going to happen. And they told us that they would inform the other two tribes there that the litigation and whatever happened during the litigation of the Hudson Dog Track would not be discussed.[184]

Skibine's explanation before the Committee is undermined by a letter from Ray Wolf, the Vice-Chairman of the LCO Governing Board. Wolf wrote:

> George Skabine [sic], the Director of the BIA Office of Indian Gaming Management and Nancy Pierskella, Land Acquisition Specialist for his office, have suggested they come to Wisconsin on Tuesday, December 3 to meet only with the Chippewa tribes interested in acquiring off reservation land for the purposes of establishing a casino, specifically, Hudson.
>
> The purpose of the BIA meeting is to provide technical assistance to Mole Lake, Red Cliff, and Lac Courte Oreilles. Mr. Skabine [sic] is aware of the need for discretion as his office is scheduled to meet the next day with all of the Wisconsin tribes to provide technical assistance on gaming compact negotiations.[185]

In interviews with Mark Goff, lobbyist for the applicant tribes, and J.W. Cadotte, a member of the Lac Courte Oreilles tribe, Committee investigators learned that there were two meetings held on December 3, 1996. The first meeting was a smaller meeting held at the council headquarters, and the second was a large meeting held at the LCO bingo hall. This is an important fact which can explain why the two sets of affidavits are diametrically opposed. Most of the Interior officials who signed affidavits regarding a December 3, 1996, meeting did not attend the initial meeting at the tribal headquarters. [186] This is a fact that should have been known to the attorneys preparing the affidavits, and to Mr. Skibine, who apparently attended both meetings and failed to reflect this fact in his affidavit.

Shannon Swanstrom, attorney for the Red Cliff tribe, took notes at the December 3, 1996, meeting with George Skibine. In these notes, Ms. Swanstrom wrote a quote from Skibine as follows: "I find that [Hudson] in best interests of tribes and not to detriment of surrounding community, will send letter to governor." [187] This information

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[184] Testimony of George Skibine before the Committee on Government Reform & Oversight, January 22, 1998.
[185] Letter from Raymond Wolf to Arlyn Ackley, Sr. and Rose Gurnoe, November 7, 1996 (Exhibit 60).
[186] Committee interview with Mark Goff and J.W. Cadotte, December 15, 1997.
[187] *See* Notes taken by Shannon Swanstrom, December 3, 1996, (quotation in the original) (Exhibit 61).

places Skibine's testimony before this Committee in question.

The Department Of the Interior Misled the Committee and a Federal District Court in Wisconsin With the Information Contained in the Administrative Record

The administrative record detailing this case was compiled by the Department of the Interior for the ongoing litigation over this matter in Wisconsin. The Committee reviewed the material and believes that Interior officials may have tried to mislead those who received the record. First, the record does not adequately reflect support for the application to take land into trust. A review of the material received by the Committee pursuant to its subpoena revealed the following support: a petition totaling 114 pages of signatures,[188] another petition of 38 full or partial pages, [189] 207 cards,[190] and 127 letters.

The record prepared for the litigation, however, reflects a lesser amount of support and inaccuratly indicates that there was more opposition than support. The Department's Solicitor took affirmative steps at a hearing conducted by this Committee to provide misleading information about the extent of the support for the application. The following exchange occurred before this Committee:

> Mr. HORN: Mr. Secretary, your counsel, to be charitable about it, misrepresented the record in terms of that document when he said it was referred to the court. We got the document finally and what is in the court's binder is not that document. Here is the difference: 797 cards, letters and petition signatures are on that computerized document to which your counsel, the Solicitor of Interior, I think, referred, and we have in the original document, which is not in the court record, 1,413 petition signatures. In other words, counsel is saying it was all the same and it is just some were typed and Xeroxed and what not and some were in hand, and that means 616 people were left out. And I don't particularly appreciate that misrepresentation…
>
> Mr. LESHY. I am told by staff that Mr. Hartman, who had the handwritten signatures converted to type script, eliminated duplicate signatures so that these 716 or however many there were taken out were actually in there twice.[191]

This testimony is particularly interesting when compared with the memo authored by George Skibine, the head of the IGMS, which states: "Several thousand cards, letters, and petition signatures have been received in support of an Indian casino at the Hudson dog

[188] Petition of General Support (Exhibit 62).
[189] Letter to Secretary Babbitt from petition signatories, January 26, 1994 (Exhibit 63).
[190] Letter from Wisconsin resident to George Skibine (with attached cards), June 5, 1995 (Exhibit 64).
[191] *See* January 29, 1998 hearing testimony before the Committee on Government Reform and Oversight, pp. 932-933.

track."[192] Mr. Leshy's statement, given every benefit of the doubt, does not explain how "several thousand cards, letters, and petition signatures" were represented by 797 names compiled by the Department to provide the Federal Court in Wisconsin a sense of how much support there was for the application. The record, read at face value, misrepresents the facts and support associated with this application. The 38 page petition alone would probably have had more than 797 signatures. Because the full 38 pages have not been included in either the record compiled for litigation, or the material produced to this committee, it is not possible to determine the precise number. The figure of support rises when the additional 114 page petition and other forms of support are included. Although it is curious that the Department appears to have actively misrepresented the lack of support for the application, it is consistent with the need to make this point so as to support the theory of the rejection.

The Department of the Interior Provided Misleading Information to Congress Prior to the Decision to Reject the Application Was Made

At least one representative who came out in opposition to the application apparently received false information from Secretary Babbitt's office, perhaps in an effort to "educate" individuals in order to encourage them to oppose the application. In a letter to Secretary of the Interior Bruce Babbitt, Representative Steve Gunderson stated: ✌According to your office, since Congress passed the IGRA in 1988, the Secretary of Interior has <u>never</u> approved the acquisition of off-reservation land to be used for casino gambling."[193] The information provided to Representative Gunderson – that "the Secretary of the Interior has never approved the acquisition of off-reservation land to be used for casino gambling" -- is false. Hilda Manuel, Deputy Commissioner at BIA, when asked about Congressman Gunderson's assertion stated ✌It's not correct."[194]

Once again, the veracity of Department of the Interior representations about the Hudson decision is called into question when one considers that false information was provided to Congress even before the application was rejected. There certainly appears to be a self-fulfilling aspect to the Secretary's office response to Congress – the information provided appears now to have helped pave the way for the decision to reject.

The Role of Section 20 in the Decision

In the rejection letter, Michael Anderson also informed the applicants that even if the Section 20 problems were satisfied, the Secretary would reject the application under another statutory provision known as Section 151. There is no indication in the record, however, that the Department ever analyzed the application according to the provisions of Section 151. Furthermore, Secretary Babbitt told this Committee: ✌[T]he Department

[192] Memorandum from George Skibine to Assistant Secretary - Indian Affairs, undated (Exhibit 45).
[193] Letter from The Honorable Steve Gunderson to Secretary Bruce Babbitt, April 28, 1995 (emphasis in the original) (Exhibit 47).
[194] Deposition of Hilda Manuel, January 6, 1998, p. 50.

based its decision solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act."[195]

On review, however, this statement does not appear to be entirely correct. Perhaps the most direct indication is from George Skibine, the head of the Indian Gaming Management Staff, who made the following statement in a deposition before this Committee:

> Q If I asked you the question, the decision to reject the Hudson Dog Track application was based solely on section 20 of the Indian Gaming Regulatory Act, would you say that that was correct or false?
>
> A It would be false. [196]

The confusion over how the application would be rejected is seen in an exchange of e-mails in the days before the decision was made. In an e-mail to Skibine and Heather Sibbison, Kevin Meisner states:

> Why are we changing our analysis to deny gaming under Section 20? I thought after the Friday meeting that everyone (except Duffy who we had not yet consulted) agreed that there was not enough evidence supporting a finding of "detriment" to the surrounding communities under Section 20 and therefore we would decline to acquire the land under 151. [197]

In an indication that John Duffy was the driving force behind the ultimate decision on how the rejection would be made, Meisner sent the following message to Troy Woodward:

> Troy: Apparently Bob Anderson did review the letter late Monday. I checked with him Tuesday and he thought that since Duffy wanted the Section 20 finding so badly that we would let the letter go through. I still think that there was not enough evidence for a section 20 finding of

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[195] Testimony of Secretary of the Interior Bruce Babbitt, January 29, 1998, p. 776.

[196] Deposition of George Skibine, January 13, 1998, p.17. In a document that runs counter to the many of the other important documents related to the Hudson matter, George Skibine makes the following request of lawyers in the Solicitors office: "As you know, I am drafting a document relating to the acquisition of the Hudson dog track by three Indian tribes in Wisconsin. The letter will decline to take the land into trust pursuant to the IRA and Part 151 relying on the discretionary authority of the Secretary not to take such land into trust. The acquisition is for gaming purposes, but we want to avoid making a determination under Section 20 of IGRA." E-mail from George Skibine to Dave Etheridge, Kevin Meisner and Troy Woodward, June 6, 1995 (Exhibit 73). This communication is particularly strange because others on Skibine's staff were not aware of the decision in early June, and all indications are that the record had not provided support for a finding that the application was a detriment to the community. Furthermore, it is curious that Skibine would come right out and say that there was a desire to avoid making the decision under Section 20 of IGRA. One can speculate that he wanted to avoid the setting a precedent by making the decision under Section 20 without employing the traditional Section 20 criteria.

[197] Exchange of e-mails between Kevin Meisner and Heather Sibbison, George Skibine and Troy Woodward, July 11, 1995 (Exhibit 74).

detriment.[198]

Once again, this exchange of e-mails shows that there were significant concerns about whether there was evidence to support a finding under Section 20 of IGRA. Given the strong feelings that there was not enough evidence to make such a showing, it is all the more curious that Secretary Babbitt continues to maintain that the decision was based "solely on the criteria set forth in Section 20 of the Indian Gaming Regulatory Act."[199]

The Department of the Interior Mischaracterized Governor Thompson's Public Position Against the Expansion of Gambling

Notwithstanding representations fr om a number of Department officials that Governor Thompson was opposed to the Hudson application, he stated: ✌I will not promote and I will not block. I'm on the tail end of the process, and if everyone else, including the local people, approves it before me, I won't stop it."[200] Although there is nothing in the record to indicate anything to support his position, Babbitt has stated that the Governor opposed the dog track.[201]

Governor Thompson did make statements about opposition to the spread of gambling. However, in this case, he had apparently discussed a deal where the tribes would each give up their rights to a second casino if the Governor would approve the Hudson casino. Thus, there would be <u>fewer</u> casinos allowed in Wisconsin if the Hudson application were approved. Fred Havenick explained the proposal before the Committee:

> If you wanted to say that you were against the expansion of gambling, there are currently 17 casinos operating in Wisconsin. This really would have reduced that number by 3 . . . it would be almost a 20 percent reduction in the total number of casinos[.][202]

The record contains no indication that the Department made an effort to obtain Governor Thompson's views on the Hudson application. Therefore, it seems inappropriate that it would make representations about whether he would, or would not support the application.

DEPARTMENT OF THE INTERIOR COMPLIANCE WITH DOCUMENT

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[198] *Id.*
[199] Testimony of Secretary of the Interior Bruce Babbitt, January 29, 1998, pp.776.
[200] Doug Stohlberg, *"Thompson Says he "Won't Stop" Casino at Dog Track,"* Hudson Star Observer, 2/10/94.
[201] *See* Testimony of Secretary Bruce Babbitt before the Government Reform & Oversight Committee, January 29, 1998, p. 946.
[202] Testimony of Fred Havenick before the Government Reform & Oversight Committee, January 29, 1998.

REQUESTS

On August 20, 1997, the Department of the Interior was asked to provide documents pertaining to the Hudson matter. The compliance date for this request was September 8, 1997. Unfortunately, however, Interior failed to respond adequately to this Committee's legitimate request.

On October 23, 1997, Interior provided one file of records. On November 3, 1997, another file of records was produced. At this point, the Committee was under the impression that production of records -- with the exception of a record prepared for litigation in Wisconsin, which the Committee initially elected not to receive -- was complete.

On December 11, 1997, during a deposition before this Committee, Robin Jaeger, the Superintendent of the Regional Office in Wisconsin had the following exchange with Committee counsel:

> Q: When did you receive communication that you are requested to produce documents about the Hudson dog track matter?
>
> A: Yesterday.[203]

This revelation prompted the Committee to take the unusual step of issuing a subpoena to a government agency. On December 12, 1997, Interior received a subpoena to produce all documents related to the Hudson matter. The compliance date for this subpoena was January 2, 1998.

The following is a list of dates and productions received from the Department of the Interior after it received this Committee's subpoena:

- December 17, 1997 — One file containing records.
- January 2, 1998 — Six boxes of records.
- January 13, 1998 — One file containing records. Information included records related to Ada Deer, whose deposition was taken that day.
- January 16, 1998 — One file containing records.
- January 17, 1998 — One file containing records.
- February 13, 1998 — Copies of e-mails.

[203] Deposition of Robin Jaeger, December 11, 1997, p. 11-12.

But for the deposition of Robin Jaeger, and the belated discovery that the Department of the Interior had failed to produce all relevant documents, the Committee would have been denied significant, probative material.

WHITE HOUSE CLAIMS OF PRIVILEGE DELAYED THE COMMITTEE'S INVESTIGATION

The White House appeared to be particularly concerned about turning over to the Committee a number of documents that indicated the President had some level of familiarity with the Hudson application. Many months were consumed while the White House argued that some documents responsive to legitimate requests made by the Committee were "subject to executive privilege."

The Committee did ultimately receive relevant documents from the White House. The original of one document with the following message has still not been provided to the Committee:[204]

> Leon
> What's the deal on the
> Wisconsin tribe Indian
> dispute?
>
> BC

The author of this note is the President, and the White House argued that Congress should not receive this document. Both this Committee and the Congressional Research Service[205] disagreed with the Counsel to the President's legal analysis that executive privilege applied to this document, and to the other documents withheld for a considerable period of time.

CONCLUSION

Evidence obtained by this Committee indicates that the decision to reject the Hudson application did not comport with factual evidence and past practice. The fact that the Department of the Interior has continued to misrepresent how and why the decision was made makes Secretary Babbitt's alleged comments to Paul Eckstein about Harold Ickes' role in the decision and the importance of Native American political contributions seem an accurate reflection of the facts. Secretary Babbitt's protestation that he did not make the statement about contributions and that he did not mean the statement about Ickes ring hollow in the face of the candid statements of his staff about what was really going on in

[204] Exhibit 78.
[205] Memorandum from American Law Division, Congressional Research Service, to Honorable Dan Burton, December 3, 1997 (Exhibit 79)

the Department’s decisionmaking process.